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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: TERRORIST ATTACKS ON
4 SEPTEMBER 11, 2001,

5 v.

03 MDL 1570 (FM)

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6 New York, N.Y. -
7 March 22, 2016
10:20 a.m.

8 Before:

9 HON. FRANK MAAS,

10 Magistrate Judge
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APPEARANCES

KREINDLER & KREINDLER
Attorneys for Plaintiff
BY: JAMES KREINDLER
ANDREW J. MALONEY

MOTLEY RICE
Attorneys for Plaintiff
BY: ROBERT T. HAEFELE

ANDERSON KILL & OLICK, P.C.
Attorneys for Plaintiff
BY: JERRY S. GOLDMAN
BRUCE STRONG

COZEN O'CONNOR
Attorneys for Plaintiff
BY: SEAN CARTER
SCOTT TARBUTTON

BERNABEI & WACHTEL
BY: ALAN KABAT

CLIFFORD CHANCE, US, LLP
Attorneys for Defendant Dubai Islamic Bank
BY: STEVEN T. COTTREAU
KATIE BARLOW

LEWIS BAACH, PLLC
Attorneys for Defendants Muslim World League and
International Islamic Relief Organization
BY: AISHA BEMBRY
ERIC LEWIS
WALEED NASSAR

SALERNO & ROTHSTEIN
Attorneys for Defendant Yassin Kadi
BY: PETER C. SALERNO

MARTIN F. MCMAHON & ASSOCIATES (via telephone)
Attorneys for Defendant International Islamic Relief
Organization
BY: W. JAMESON FOX
MARTIN F. McMAHON

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(Case called)

THE DEPUTY CLERK: Counsel, please state your name for the record.

MR. CARTER: Good morning, your Honor. Sean carter from Cozen O'Connor on behalf of the plaintiffs.

THE COURT: Good morning.

MR. HAEFELE: Your Honor, Robert Haefele from Motley Rice for plaintiffs.

MR. COTTREAU: Good morning, your Honor. Steven Cottreau on behalf of Dubai Islamic Bank.

MS. BARLOW: Good morning, your Honor. Katie Barlow on behalf of Dubai Islamic Bank.

MR. TARBUTTON: Good morning, your Honor. Scott Tarbutton for federal insurance plaintiffs.

MR. KABAT: Good afternoon, your Honor. Alan Kabat for Dr. Al-Turki.

MR. SALERNO: Good morning, your Honor. Peter Salerno for Yassin Abdullah Kadi.

MR. GOLDMAN: Jerry Goldman with Bruce Strong, Anderson Kill for the Plaintiffs Executive Committee and the O'Neill plaintiffs.

MR. MALONEY: Good morning, your Honor. Andrew Maloney with Jim Kreindler for the plaintiffs.

THE COURT: Who is hiding.

MR. KREINDLER: Good morning, your Honor.

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1 MR. NASSAR: Good morning, your Honor. Waleed Nassar
2 on behalf of the Muslim World League and International Islamic
3 Relief Organization.

4 THE COURT: I guess that's everyone.

5 Were you given a copy of the appearance sheet?

6 OFFICIAL REPORTER: Yes, your Honor.

7 THE COURT: Great.

8 I am sure you were told I would like to start with the
9 Dubai Islamic Bank motion.

10 MR. CARTER: Thank you, your Honor.

11 I think because of the telephone appearance, your
12 Honor, we need to be near a microphone, so.

13 THE COURT: Okay, sure.

14 MR. CARTER: If I stand here.

15 THE COURT: And I understand Mr. McMahon or his
16 colleague but we can't hear them quite as the well, is that
17 correct? Or not at all?

18 Okay, well let's go on.

19 MR. CARTER: Your Honor, with regard to Dubai Islamic
20 Bank there are two motions presently before the Court and
21 before getting into the specifics of the motions themselves, I
22 would just like to take a very brief moment to discuss the
23 procedural history of the disputes that brought us to this
24 point.

25 As your Honor is aware, Judge Daniels denied Dubai

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1 Islamic Bank's motion to dismiss concluding that the
2 allegations of plaintiff's pleadings were sufficient to
3 establish personal jurisdiction over Dubai Islamic Bank and
4 also holding with the exception of a limited number of claims
5 that plaintiffs had stated a claim under Rule 12(b)(6).

6 Judge Daniel's decision did not include a complete
7 recitation of every allegation the plaintiffs had offered
8 against Dubai Islamic Bank in support of their claims but it
9 did recount the broad picture that plaintiffs had portrayed as
10 to the historical relationship between Dubai Islamic Bank and
11 al Qaeda and clearly deemed that significant and relevant in
12 denying the motions to dismiss.

13 Judge Daniels specifically held that it can reasonably
14 be inferred from the allegations that Dubai Islamic Bank
15 personally and intentionally provided support to al Qaeda in
16 aid of their plan to commit an aggressive terrorist strike
17 against the United States. He cited in particular the pre-1999
18 collaboration between al Qaeda and Dubai Islamic Bank that
19 prompted U.S. officials to request a meeting with UAE officials
20 and seek an intervention; in their words clean up the bank.

21 He went on to thereafter deny Dubai Islamic Bank's
22 motion to dismiss under Rule 12(b)(6) and, in particular, the
23 arguments Dubai Islamic Bank had raised with respect to
24 causation explaining that al Qaeda's ability to accomplish the
25 coordinated large scale terrorist attacks of September 11th is

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1 dependent on the cumulative efforts and contributions of untold
2 thousands over an extended period of time.

3 It is the collective contributions of all such
4 sponsors that gives birth to a repository of seemingly endless
5 financial military and logistical resources from which the
6 terrorist organization draws upon with immunity to carry out
7 its attacks against innocent civilians. Such a reality bears
8 directly on the issue of temporal and causal proximity.

9 The result of that decision, your Honor, is that
10 plaintiffs were authorized to proceed with merits discovery as
11 to Dubai Islamic Bank. Of course, the scope of discovery
12 afforded in the context of that merits discovery as defined by
13 Rule 26(b) which broadly authorizes discovery into any matters
14 relevant to any party's claim or defense in the litigation.

15 The present dispute comes before the Court within that
16 framework and involves a set of very focused inquiries that go
17 directly to the heart of the nature, origin, and extent of
18 Dubai Islamic Bank's collaboration with al Qaeda and its
19 immediate partners. As detailed in the papers, your Honor, the
20 motions to compel focus on records relating to essentially six
21 primary categories.

22 First, individual al Qaeda members who are alleged to
23 have held accounts at Dubai Islamic Bank. In many cases
24 plaintiffs have provided the specific account numbers for the
25 accounts that those individuals held with the bank, at least to

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1 the extent known.

2 THE COURT: One of the bank's arguments is
3 burdensomeness because, apparently, even though you can
4 electronically search the accounts to come up with the actual
5 transaction records you need to go into boxes in warehouses
6 some of which had have been destroyed.

7 MR. CARTER: Your Honor, I think there are two
8 responses to that and one deserves a bit of context.

9 Dubai Islamic Bank has presented itself in dealing
10 with the plaintiff and to the Court as a sophisticated,
11 international financial institution which adheres to the
12 highest standards of international practice in banking and
13 financial markets that abhors terrorism of all kinds, and I
14 think that is significant in evaluating several of its
15 arguments including arguments about the feasibility of
16 searching for records relating to a specifically identified
17 account.

18 THE COURT: Well, if we remove the case from this
19 context and this was a large American bank, Citibank coming in
20 in relation to a contract dispute and they said you are asking
21 us to search for account number for -- and it is sort of the
22 fill in the bank as I'm not sure what the right number
23 150-some-odd, 200-odd or 2,900 accounts, but even if it were 10
24 accounts, if you are looking for a lengthy period of time,
25 every transaction Citibank arguably would be saying that's

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1 unduly burdensome even though we are already obviously a large
2 bank.

3 MR. CARTER: Your Honor, I think there are two points
4 that warrant examination here. The first is that Dubai Islamic
5 Bank can't present its own unwieldy record-keeping system as a
6 defense to its obligations under the discovery rules. The fact
7 that they don't maintain records allegedly in a form that
8 renders them easily searchable doesn't provide them with a
9 sword to defeat the normal operation of the discovery rules.

10 I think, additionally, it is difficult to reconcile
11 the description they've given of the record keeping processes
12 with their arguments concerning their operation as a
13 sophisticated international financial institution because there
14 must be circumstances in which authorities come to Dubai
15 Islamic Bank for a western bank and say, in relation to a
16 criminal investigation or a counter-terrorism investigation, we
17 need the records pertaining to a particular account. And we
18 have evidence that that happened here in fact. We have the
19 account of Ammar al-Baluchi for which there are documents in
20 the record indicating that the central bank of the UAE sent a
21 notification to Dubai Islamic Bank's CEO saying U.S.
22 authorities are going to come to visit you and request a
23 certification of the business records for this account. About
24 a month later Dubai Islamic Bank's head of money laundering
25 sent back a letter indicating that this is the certification of

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1 the business records which are attached.

2 So, we see in that framing that Dubai Islamic Bank
3 appears to have the capacity to do this when asked by
4 authorities and in fact it says in its motion that we have
5 complied with authorities from the UAE and from the US
6 government in all these counter-terrorism investigations.

7 So you now, somewhat quizzically, we don't have the
8 actual records attached to that certification of business
9 records. Also, with regard to the sufficiency of these
10 searches, the circumstances surrounding this Baluchi account
11 are concerning to us in that you have an inquiry from the
12 central bank that goes directly to the CEO of Dubai Islamic
13 Bank and then you, a month later, have the result of whatever
14 that inquiry was coming from the head of money laundering and
15 absolutely nothing in between. Nothing in between to describe
16 what happened once the notification was received by the CEO,
17 what processes were initiated initially to conduct the
18 investigation that was required and in obtaining the records,
19 no internal correspondence and certainly not the case that the
20 CEO walked downstairs and found these records himself. Some
21 process occurred and that process may very well reveal that
22 Dubai Islamic Bank does in fact have the capacity to find these
23 records.

24 On the burden, one other thing, your Honor, we have
25 been down this road before. You will recall in earlier stages

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1 when Mr. McMahon was representing the Muslim World League and
2 IIRO he indicated that the searches we were requesting they
3 make of the financial records were going to be incredibly
4 burdensome because they didn't keep their records in an easily
5 searchable form and they were going to have to go into the
6 individual files. And your Honor's response at that time was
7 this whole case is about money being diverted towards terrorist
8 goals. As I understand it, the lion's share of the effort is
9 to see where money went so the notion that this is a lot of
10 paper or bytes of information and therefore burdensome,
11 Mr. McMahon, doesn't really resonate with me.

12 And that is the situation here as well, your Honor.

13 THE COURT: I hope I said gigabytes. But, other than
14 that, however it was transcribed.

15 MR. CARTER: You probably did, your Honor.

16 THE COURT: Terabytes.

17 MR. CARTER: And so again, your Honor, with regard to
18 the individual accounts for the individual people, in most
19 cases we have identified the account numbers at least to the
20 extent we know them. We are not asking for, you know, whatever
21 discussions may have occurred in the context of the meet and
22 confer, the issue that is presently before the Court from the
23 accounts that are the subject of the motion to compel, it is a
24 very focused and limited number of accounts.

25 THE COURT: And what is that number? Approximately.

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1 MR. CARTER: Approximately? Well, I should say, your
2 Honor, we don't know entirely how many accounts these
3 individuals held but you are talking about only 8 individuals
4 and the Taliban accounts. Now, with regard though those it has
5 been argued it would be likely to, for them to search and find
6 any Taliban accounts. The problem is that they are required by
7 the international sanctions regimes to search for and identify
8 any accounts they hold for Taliban members who are on the
9 consolidated lists. We are simply asking them to do something
10 that they're required to do by law.

11 The additional problem, your Honor, is that we see a
12 notification from the period in 2003 to Dubai Islamic Bank
13 again from the Central Bank of the UAE asking them to search
14 for and freeze any accounts they hold with the below listed
15 members of the Taliban and Taliban-related entities. The
16 letter goes on to identify apparently 152 individuals
17 associated with the Taliban and one entity. All of the names
18 on that letter have been redacted in the production we
19 received. It is difficult to understand why but clearly those
20 are Taliban members and Taliban entities for which DIB was
21 required to and presumably has conducted a search.

22 Lastly, your Honor, we also know from the record that
23 there is evidence that authorities asked Dubai Islamic Bank to
24 close down a certain number, 16 or so, Taliban accounts
25 following the embassy bombings.

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1 THE COURT: Who made that request? Also the central
2 bank?

3 MR. CARTER: I believe it was UAE authorities. I
4 would have to double check that, though. So, we have a number
5 of circumstances in which these Taliban accounts have been very
6 specifically identified.

7 Now, with regard to the Taliban, your Honor, I also
8 want to address the relevance arguments.

9 THE COURT: Before we get to that, part of
10 Mr. Cottreau's papers say that you folks were seeking searches
11 for 2,900 individuals.

12 MR. CARTER: Well, your Honor --

13 THE COURT: Are you using smaller numbers?

14 MR. CARTER: Again, your Honor, these are issues that
15 most of the numbers are comprised of people who are on the
16 consolidated list and so that's a consolidated list, sanctions
17 list that goes out to all financial institutions and that all
18 financial institutions are required to conduct searches for.

19 Now, there were some additional al Qaeda-related
20 members that we had included in those lists but with regard to
21 the Taliban, it is not all that difficult to go back to the
22 list that exists say, for instance, between 2001 and 2004, a
23 relevant discovery period, and to determine which Taliban
24 members had accounts at DIB and which Taliban identified
25 entities had accounts at DIB and that's really all we are

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1 suggesting here.

2 THE COURT: One thing that struck me as overbroad but
3 it is largely nomenclature is you were asking for records
4 concerning accounts that were frozen following the terrorist
5 attacks which could be a lot of accounts unrelated as opposed
6 to asking for accounts which were frozen as a result of the
7 terrorist attacks which, presumably, is a smaller universe.

8 MR. CARTER: Yes, your Honor.

9 I think this issue about the nature of the request
10 potentially capturing the Foreign Narcotics Drug Kingpin Act
11 sanctions programs and other programs is a little bit of a red
12 herring. We are talking about accounts that were frozen
13 pursuant to the terrorism sanctions regimes and we can easily
14 just simply limit it to the relevant terrorism sanctions
15 regimes and therefore constrain it to the entities and
16 individuals that most clearly relate to the claims at issue in
17 this case. And we can conflate the period for which we are
18 seeking that information to a period reasonably following the
19 September 11th attacks and in that way substantially narrow
20 this.

21 THE COURT: Well, reasonableness is in the eye of the
22 beholder. Bear with me a second. What are you suggesting
23 would be reasonable stop and start dates for a search? And I
24 recognize it may be account-specific or category-specific.

25 MR. CARTER: Okay, your Honor. We were speaking a

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1 minute ago about the accounts frozen after 9/11.

2 THE COURT: Okay. Fair enough.

3 MR. CARTER: So, for those we would be talking about
4 September 12, 2001 and going forward to the period that's been
5 determined by the Court to be the outside limit of discovery
6 which is 2004.

7 Now, for the other accounts, for the specific al Qaeda
8 individuals in particular, some of these accounts clearly date
9 back to the period of 1992 and move forward for a longer period
10 of time and, again, relative to the relevance arguments, Dubai
11 Islamic Bank has posited that the September 11, 2001 attacks,
12 the planning for the September 11, 2001 attacks did not begin
13 until late 1988 and 1999 and therefore it is relieved of
14 responsibility for searching for any records that predate that
15 time period.

16 First of all, your Honor, we have already been down
17 this road as well and we set a presumptive time frame for
18 discovery in these proceedings and we certainly haven't limited
19 discovery to individuals specifically involved in the September
20 11, 2001 attacks over a period of two years that preceded it.
21 The Court has repeatedly authorized plaintiffs to conduct
22 discovery and to the broader historical relationships between
23 the defendant and al Qaeda dated back to 1992 and we are simply
24 seeking that same discovery with respect to the particular
25 individuals that have been identified in the briefing papers.

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1 So, the other problem with the argument that they have
2 made about the timing of the September 11, 2001 attacks and the
3 planning is that it is simply not correct.

4 They take a fragmented sentence out of the 9/11
5 Commission Report that really refers to the date on which
6 Bin Laden formally green lit the plot as a go ahead. That has
7 nothing to do with the date on which planning, consideration,
8 and evaluation of attacks against Americans exploiting the
9 civil aviation system. Al Qaeda began doing that much, much,
10 earlier.

11 Bin Laden was exploring those plots in the early
12 1990s. Khalid Sheikh Mohammed developed a plot -- the Bojinka
13 plot -- using funding that was provided by al Qaeda during that
14 time.

15 Khalid Sheikh Mohammed goes to Afghanistan in 1996
16 around the same time that Bin Laden arrives, he stays there
17 thereafter collaborating with Bin Laden. During that entire
18 period he is able to stay there, Bin Laden is able to stay
19 there because of the material support and resources being
20 provided by their benefactors. So,

21 the arbitrary idea that September 11, 2001 appeared
22 out of the wind suddenly in the beginning of 1999 doesn't have
23 any merit and, in addition, it is contrary to evidence we have
24 seen.

25 Relatedly, on the relevance front, your Honor, DIB is

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1 seeking to avoid discovery into its relationships with the
2 Taliban. This really goes to the heart of the claims.

3 In the period before September 11, Al Qaeda and the
4 Taliban had a symbiotic relationship, your Honor; they shared
5 common resources, intermingled their people. Al Qaeda fighters
6 went to fight alongside the Taliban in conflicts in
7 Afghanistan. Bin Laden lived side by side along with the
8 Taliban leadership in Kandahar. Most notably they shared
9 financial resources. The very foundation of this symbiotic
10 relationship was al Qaeda's provision of massive funding to the
11 Taliban to the tune of \$20 million a year which Bin Laden was
12 able to draw on the relationships he had with wealthy patrons
13 in the gulf and use that money as a shared financial base for
14 the Taliban around al Qaeda in exchange for which Bin Laden
15 enjoyed safe haven in Afghanistan throughout that period.

16 So, there is no divide between al Qaeda money and
17 Taliban money between this time period. If you want to find
18 al Qaeda money you are going to have to go to the Taliban
19 accounts. In fact, one of the diplomatic cables that was
20 released from Secretary Clinton's office identified gulf
21 patrons as the primary benefactor of both al Qaeda and the
22 Taliban, and as a consequence, the Taliban accounts are
23 absolutely critical to this. But you don't really have to take
24 our word for it, your Honor, the international sanctions and
25 declarations of United Nations Security Council make it

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1 absolutely clear.

2 In the wake of the embassy bombings the security
3 Council issued resolution 1267 which established the joint
4 al Qaeda and Taliban Sanctions Committee, a single committee
5 for both entities. It condemned the Taliban's role in working
6 with al Qaeda and directed all states to freeze funds and other
7 financial resources including funds derived or generated from
8 property owned or controlled directly or indirectly by the
9 Taliban.

10 So, the United Nations security council response to
11 the embassy bombings was a direct recognition that the
12 provision of support to the Taliban was support to al Qaeda and
13 that that support had directly enhanced al Qaeda's operational
14 capabilities. And so, the Taliban accounts, your Honor, go to
15 the very essence of whether or not this relationship existed.

16 On a related note, the issues that DIB has raised
17 again about the inquiries into its potential involvement in the
18 embassy bombings and in the accounts that were held by al Qaeda
19 members at DIB who were involved in the bombings go right to
20 the heart of whether or not DIB maintained relationships with
21 al Qaeda including support for its collaborational efforts to
22 attack the United States.

23 THE COURT: Let's talk a bit about some of your other
24 requests which is the documentation to the Shariah board and
25 Fatwahs and the like.

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1 MR. CARTER: Your Honor, if I may? One last thing on
2 a related subject and then I will go there?

3 THE COURT: Yes.

4 MR. CARTER: The '98 and '99 meetings in the offices
5 in the U.S. and UAE, I think, deserves a little bit more
6 primacy.

7 Again, Dubai Islamic Bank has presented itself as this
8 reputable international financial institution that cares deeply
9 about its reputation in the world and abhors terrorism of all
10 kinds. Following the 1999 meeting between U.S. officials and
11 UAE officials, a state department official publicly confirms
12 that a meeting was held between the U.S. official and UAE
13 officials to discuss Dubai Islamic Bank's role in laundering
14 funds on behalf of the world's most notorious terrorist Osama
15 Bin Laden.

16 On the same day, the New York Times published a very
17 prominent article indicating that the CIA had uncovered
18 evidence that DIB was serving as a secret channel for
19 laundering funds on behalf of Osama Bin Laden.

20 The reputational, financial, and business implications
21 of being so publicly indicated in laundering funds on behalf of
22 Bin Laden are remarkable and if we accept Dubai Islamic Bank's
23 own representations about its standing in the world community
24 and concern about its world reputation, it follows that some
25 inquiry would have been initiated by the leadership of Dubai

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1 Islamic Bank concerning the nature of these allegations and
2 whether they had merit and that there would have been some
3 internal investigation.

4 All we have is a few correspondence about a potential
5 lawsuit against the New York Times but nothing -- nothing --
6 resembling the kind of response you would expect for these
7 kinds of accusations.

8 What makes the matter all the worse, your Honor, is
9 the nature of Dubai Islamic Bank's relationship to the
10 government of Dubai and the UAE generally.

11 At the time this meeting occurs --

12 THE COURT: The bank is, in effect, government owned;
13 is that correct?

14 MR. CARTER: They say it is largely owned by the
15 government of Dubai. In addition, at the time of this
16 particular occurrence, it is publicly confirmed that U.S.
17 officials met with the ruling Maktoum family.

18 Now, at that time a member of the Maktoum family who
19 served as the vice president and prime minister of the UAE and
20 the leader of Dubai was the primary shareholder of Dubai
21 Islamic Bank. Now, given those relationships one would also
22 expect that Dubai Islamic Bank would have sent inquiries to its
23 primary shareholder and its government owners asking what was
24 the nature of these accusations. We need to investigate this
25 and we need to remedy this problem.

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1 Somewhat relatedly, your Honor, it also raises the
2 question as to whether or not Dubai Islamic Bank has the
3 practical ability to now obtain those documents from the
4 government itself through a request, or through a member of the
5 Maktoum family, by request. To the extent it has the practical
6 ability by virtue of the nature of the way communication and
7 documents flow between the government and the bank to obtain
8 these documents it should be required to seek them.

9 Your Honor, with regard to the Sharia advisory board,
10 the issue here is that the cooperation that has existed between
11 most patrons of al Qaeda and Bin Laden is founded on shared
12 ideology and we have identified individuals on the Fatwah and
13 Sharia board who have made various declarations consistent with
14 logical principles underlying Bin Laden's jihad.

15 THE COURT: It seems to me there are two separable
16 issues; one, Fatwahs where he is -- he can correct me when he
17 gets up if I have it wrong -- but part of the answer is we are
18 not responsible for anything somebody on the Sharia board may
19 have done individually which is a different question than the
20 discovery issue.

21 But, apart from specific Fatwahs, whether they are by
22 an individual or in individual capacity, or something official
23 from the bank, that's different than the Sharia board which I
24 gather is in effect the executive committee of the bank and has
25 dealings with every transaction to ensure that interest rate

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1 restrictions and the like are not violated.

2 MR. CARTER: I think that's right, your Honor, and
3 obviously we are not interested in every ruling issued by the
4 Sharia board as to whether or not a particular transaction was
5 in accordance with Shariah and Islamic principles. We are
6 really only interested in any declarations made concerning
7 supporting conflict in which al Qaeda were involved,
8 declarations to support jihad.

9 We are getting into a focused inquiry as to whether or
10 not the Sharia board issued any of the Fatwahs or rulings that
11 played overall in the decision of the bank to provide supported
12 to the Taliban or to Bin Laden or for causes they're
13 championing. So, that's really the focus area there.

14 Your Honor, I would like to really quickly say a word
15 about the records that have been provided for the individuals.

16 THE COURT: I am laughing because I was just about to
17 ask you that. Go on.

18 MR. CARTER: Essentially what we have gotten in most
19 cases are statements of the account and a few instances limited
20 numbers of documents relating to the opening of the account,
21 maybe a passport photo. The problem with statements is that
22 they simply are a snapshot of debits and credits. They don't
23 tell you where the money came from and they don't tell you
24 where the money went to and they're relatively useless. They
25 also don't even tell you in most cases how the money was taken

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1 out of the bank when there is a debit.

2 THE COURT: But they inform the discussion about
3 burdensomeness, don't they?

4 If, for example, a particular account only had three
5 transactions in a month, that's a different burden than if they
6 had 3,000. And if there is a transaction that involves the
7 equivalent of \$12, that's probably not one you are interested
8 in.

9 MR. CARTER: Your Honor, there are a very limited
10 number of transactions involved in these accounts and so I
11 think, based on the number of transactions, there is not a
12 tremendous burden. I think we would all agree that a
13 transaction for \$12 is not one that needs to be searched
14 exhaustively but -- you know, we are not talking about hundreds
15 of thousands of transactions here by any stretch of the
16 imagination.

17 THE COURT: The reason I am asking is if you were an
18 assistant U.S. Attorney and the grand jury subpoenaed and
19 subpoenaed a bank, a domestic bank here and said give me all
20 the records that relate to Frank Maas including but not limited
21 to copies of checks, deposits slips, and the kitchen sink, the
22 bank would respond in the first instance to the kitchen sink
23 grand jury subpoena with transaction records, monthly
24 statements and basically say circle the ones you really want.

25 And it sounds like there would be a two-step process

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1 from what you say here although you have seen relatively few
2 transactions and there probably could be some financial floor
3 such that de minimis transactions are not searched for
4 needlessly.

5 MR. CARTER: I think that would be possible, your
6 Honor. I think we also have to have all of the accounts.
7 Right now Dubai Islamic Bank has only agreed to search for a
8 very limited number of them. For instance, we don't have any
9 statements for the Taliban accounts so I think when we go
10 through that process we would like to have all of the
11 statements at issue so we can establish the floor, so we can
12 establish the range, and proceed sort of on a comprehensive
13 basis rather than doing it based on a very limited spectrum of
14 information that we have presently.

15 Your Honor, I think that is all I have. Thank you.

16 THE COURT: Thank you.

17 Just out of curiosity while you are gathering your
18 papers, is there anybody on the telephone?

19 MR. FOX: Hi. This is Jameson Fox of Martin McMahon
20 and Associates. We represent IIRO in this case.

21 THE COURT: We didn't hear you earlier so that's why I
22 was asking.

23 Go ahead, Mr. Cottreau.

24 MR. COTTREAU: Good morning, your Honor.

25 THE COURT: Good morning.

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1 MR. COTTREAU: Let me give a little bit of context to
2 the discovery disputes and what I consider to be the heart of
3 them.

4 Plaintiff's initial requests were not as Mr. Carter
5 said, very focused inquiries. There were essentially give us
6 all Taliban accounts, all al Qaeda accounts that you have.
7 Indeed, they have requests to that effect. They have issued
8 108 RFPs -- requests for production -- and they were incredibly
9 broad. One of the challenges we had when we first sat down in
10 March 2011 to talk about the requests that they had issued was
11 we are a bank, we are not experts in who are members of the
12 Taliban and al Qaeda and who are not, who are the members of
13 al Qaeda, and that became the issue and how do we search for
14 them.

15 First, most of the members of al Qaeda, I presume, are
16 Arabic names. Their Arabic names don't translate to English in
17 any rule-based way. There are multiples of ways, indeed dozens
18 in many cases, of ways of spelling Osama Bin Laden alone. So,
19 how is it that we even conduct this search of our account
20 records?

21 That was the initial problem. And then the plaintiffs
22 didn't just want the al Qaeda members and the Taliban members'
23 accounts if they were the accounts records but including
24 accounts that were for -- and this is a quote from one of their
25 RFPs -- the actual or potential beneficial interests in those

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1 accounts or for the benefit of those accounts.

2 THE COURT: Let me interrupt you for a second because
3 there are 152, I believe it is, accounts that apparently the
4 U.S. government believes were related to terrorism in some
5 fashion that formed part, even if it was a small part, of the
6 plaintiff's request. There was a production of at least one
7 document, 152 names redacted.

8 I am not sure I understand (A) the basis for the
9 redaction; and (B) assuming that the U.S. government was of the
10 view that those were accounts related to the Taliban why
11 records related to those accounts haven't been produced
12 already.

13 MR. COTTREAU: That's a good question, your Honor, and
14 let me try to address it very straightforwardly.

15 We agreed on two methodologies. DIB conceded we
16 should have two methodologies here. One is that any -- and
17 these are not U.S. government embassies, these came from the
18 UAE central bank.

19 Any government correspondence that Dubai Islamic Bank
20 received asking it about accounts that related to al Qaeda we
21 produced. We produced correspondence back and forth that we
22 had in the bank's files and we produced any account statements
23 that related to that correspondence.

24 THE COURT: But not the transactional records.

25 MR. COTTREAU: Right. So, if I can try to address

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1 transactional records second to the first just so that we are
2 covering it comprehensively?

3 THE COURT: Sure.

4 MR. COTTREAU: With respect to who are members of
5 al Qaeda, that was an easy one for us. Okay. If we got some
6 with government request giving us a name and we search for it
7 and we identified accounts, we will give them over and we did
8 and we have given all of those accounts.

9 THE COURT: When you say you have given the accounts,
10 the monthly statements in effect or the underlying transaction
11 records?

12 MR. COTTREAU: Really, there are probably four types
13 of records associated, if I could --

14 THE COURT: Sure.

15 MR. COTTREAU: -- with a bank account. Let's just
16 take a bank account.

17 First, there would be -- should be -- for most of
18 these accounts an account opening document when the customer is
19 new to the bank. Those always didn't get retained but most of
20 them have been retained. And so you have things like a copy of
21 the passport and address and things like that and so forth and
22 we have given those for any accounts that identified related to
23 al Qaeda in any of this correspondence.

24 Secondly, we can go to our legacy system. This is a
25 legacy system so it is not a live system of people's accounts

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1 from the 1990s, this is a legacy system for the bank. We can
2 access the databases that were kept by the legacy system and
3 query them with the help of an IT department. It's not a front
4 end where you can go type on a terminal somewhere and access
5 this data anymore.

6 THE COURT: All right.

7 MR. COTTREAU: So, you can find the accounts and
8 generate essentially the account statements, what you would get
9 if you were a banking customer; records of debits and credits
10 from the account. Then there is two types of transactional
11 records that are sometimes associated with each of the things
12 on the account statement. First, there is additional --
13 sometimes additional electronic information that exists in the
14 databases about each transaction. And then, fourth, there is
15 paper records that relate to each transaction.

16 So, if you go to the bank and you want to deposit cash
17 you would write a slip out, right, and give it to the teller.
18 In many cases pretty meaningless pieces of paper but,
19 nonetheless, those are collected by the tellers -- and this is
20 a generalization because branch by branch, over time, practices
21 may have changed -- but, generally speaking, the teller would
22 bundle up her bundle at the end of the day -- his or her
23 bundle -- put it together, those would be accumulated with the
24 other tellers' at that branch and put into a box or put into a
25 folder and eventually those things got filed in offsite

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1 storage.

2 There are transactions that are incredibly more
3 complicated to find than things like that. If a customer would
4 send in a check that needed to be deposited it may sit at the
5 bank for two, three, four days after the date of deposit before
6 it is ultimately cleared and bundled up and they're very hard
7 to find, extremely hard to find.

8 So, with respect to those four types of account
9 records we agreed the following with plaintiffs and this was
10 back in our meet --

11 THE COURT: Well, you have talked about deposits. I
12 assume there were also transactions going out, checks or the
13 equivalent? Wire transfers?

14 MR. COTTREAU: Sure.

15 If a DIB customer writes a check, gives the person a
16 check, that check is deposited at another bank, for example,
17 eventually that check comes back and is presented to Dubai
18 Islamic Bank and the practices changed over time and the check
19 is either honored or not. Those checks that are bundled up
20 together and cleared in that way are hard to find. They're
21 obviously not teller records, they're going to be put in
22 various boxes over time and the index, you can imagine there
23 are over 50,000 boxes here. It is hard to -- you are looking
24 for a needle in a hay stack every time.

25 So, what we agreed with the plaintiffs in our meet and

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1 confer -- and this is confirmed in my July 2011 letter that you
2 have as part of our submission -- what we agreed was we will
3 give you the account opening statements, those are easy --
4 relatively easy to pull. We will give you the printouts from
5 our legacy computer system showing each and every transaction
6 in the accounts. But, with respect to the transactional
7 records this is really burdensome to find, they're difficult.
8 I'm not even saying they're findable. Some of them might not
9 be. Come back to us and tell us which ones you want us to pull
10 and which ones you didn't.

11 That was a conversation we had in March 2011. It was
12 confirmed in my letter in July 2011. We produced -- we
13 completed our production minus some additional supplements over
14 the years but we completed our production in principle at the
15 end of August 2012 consistent with your order. And largely we
16 produced the account statements in that August batch because it
17 was our production that was made after we finally got UAE
18 approval to produce account statements with your Honor's help.

19 THE COURT: You said that was 2012?

20 MR. COTTREAU: 2012.

21 The plaintiffs never came to us in the intervening
22 years and said pull these transaction documents for these
23 accounts or pull them all. They stayed silent. The first time
24 we heard from plaintiffs on this issue was on the day before
25 they filed their motions to compel. We had a quick meet and

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1 confer on July 13th, 2015 and that was the first time they ever
2 voiced that they wanted them all pulled. And these aren't easy
3 to pull -- and the accounts records that we have already
4 produced, your Honor, we have produced, I believe, for seven
5 customers eight accounts with over 700 transactions on the
6 account statements. And sometimes, just for example, if you
7 try to find a check that was cleared by Dubai Islamic Bank, I
8 have looked into the burden of this even as recently as last
9 month to make sure I try to fully understand what we are up
10 against here; you might look through two, three, four boxes for
11 that branch for that day and not find it. And then you have to
12 look through two, three, four boxes per day afterwards and it
13 is not even easy to locate the two, three, four boxes on the
14 index because, as I said, it is essentially a hand-keyed index
15 for 50,000 boxes. They are not even easy categories to
16 identify the boxes on the index. If it is conceivable to try
17 to find one of these checks it may take a person around a day
18 or even longer to take a person to find one check that is
19 cleared by the bank.

20 THE COURT: Presumably, if you had a defined universe
21 of accounts and checks -- restrict it to accounts. If you had
22 a defined universe of accounts you wouldn't have to make
23 repetitive passes, you would look for all the checks for those
24 accounts in box one and move to box two?

25 MR. COTTREAU: That's true, but there is almost no

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1 overlap, your Honor.

2 THE COURT: Putting aside the question of whether
3 plaintiffs delayed too long, one of the problems with your
4 argument is assuming that these transactions or transfers are a
5 significant element to the plaintiff's case, you are basically
6 saying because of the burden they shouldn't be enabled to prove
7 their case, assuming they can.

8 MR. COTTREAU: We have never said no transactions.
9 Here is what I think would be --

10 THE COURT: Well, the transaction -- would you agree
11 that the transaction records with transaction summaries -- let
12 me call them that -- without the underlying transaction
13 records, are pretty useless?

14 MR. COTTREAU: I wouldn't agree with that. I agree
15 that in some cases they may have a more limited utility but I
16 don't think, for example --

17 THE COURT: There is an account that can be shown to
18 be an Osama Bin Laden account and it shows a million dollars in
19 and a million dollars out every month for a year without
20 something that indicates where the million came from and where
21 it went. Isn't it pretty useless?

22 MR. COTTREAU: In that example it may be. We don't
23 have any account for Osama Bin Laden. We have never had an
24 account for Osama Bin Laden to the best of all of our
25 investigation efforts dating back to 1999. And so, I will give

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1 you an example, your Honor, a cash deposit, \$500. Do we really
2 need to go find the deposit ticket for that?

3 THE COURT: Okay.

4 MR. COTTREAU: Okay.

5 THE COURT: It seems to me that the answer is
6 self-evident.

7 MR. COTTREAU: An electronic transfer from one account
8 to another and we can tell on the electronic transfer data what
9 that is. That's another one. There may have been a piece of
10 paper initiating it but we have a pretty good handle from the
11 electronic data what that is.

12 THE COURT: Okay. Well, you said in those accounts
13 there are 700 transactions. How many of those are non-cash
14 paper transactions where one would have to look at the
15 underlying record to have an understanding of what actually
16 occurred?

17 MR. COTTREAU: I think that's something we could
18 parse. I know this, about 170 of them I think are ATM
19 transactions, maybe 169, but approximately 170 are ATM. No
20 reason to pull those, obviously.

21 My suggestion would be this, your Honor, that we do
22 two things with respect to the transactional records. Number
23 one, the electronic data that we have associated with each and
24 every one of the transactions, we produce that, because I think
25 that's something we can get out with a query fairly easily

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1 compared to the task of sorting through this index of over
2 50,000 boxes and try to assess where things might be. And then
3 my other suggestion would be that we look at something that is
4 proximate in time.

5 Now, Mr. Carter said that we were taking the position
6 that we are not going to produce records back to 1992. That's
7 not our position and, indeed, for each of these eight accounts
8 if we had any account statements between 1992 and September 11,
9 2001, they were produced.

10 THE COURT: Tell me again what the eight accounts
11 relate to?

12 MR. COTTREAU: The eight accounts were the result of
13 two-fold methodology that we were talking about earlier, your
14 Honor, which is any government correspondence but primarily
15 with the UAE Central Bank, I assume some of that may have been
16 cooperation with the U.S. authorities but that's a complete
17 assumption on my part. But, beginning within two weeks after
18 9/11, the UAE Central Bank started sending around what they
19 call circulars to all of the banks asking whether you have
20 accounts in the following names.

21 THE COURT: Copies of some of which are in the papers?

22 MR. COTTREAU: Copies of some of which I think are
23 appended to their reply at A through H or so.

24 And we did account searches. These aren't easy. I
25 will give you an example of one of the accounts we produced to

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1 plaintiffs as part of this batch, the account that Mr. Carter
2 identified as Ammar al-Baluchi. We didn't have an account for
3 Ammar al-Baluchi. Okay? And this is the challenge of what
4 plaintiffs want us to do. They identify eight people and they
5 say: Find the accounts. But we did have an account for Ali
6 Abdul Aziz Ali. It turns out that's Ammar al-Baluchi's alias.
7 We found it because we were given the name and the alias, but
8 otherwise we would have no way of knowing that Ammar al-Baluchi
9 is as Ali Abdul Aziz Ali. The names are not close, they're not
10 in any way connected in our minds at the bank and certainly not
11 me as outside counsel.

12 And so, what we gave plaintiffs is the result of our
13 two-step process. Step one, anything related to al Qaeda that
14 was an account identified in any government correspondence that
15 we got they have and they have it already and they have all of
16 the account statements and they have all of the account opening
17 documents that we have.

18 Secondly, we have this problem, the Ammar al-Baluchi
19 and Ali Abdul Aziz Ali problem and the question was you are
20 asking for every Taliban member, every al Qaeda member ever and
21 you want us to identify who is al Qaeda and who is not.

22 THE COURT: That was the 2,900 names or individuals?

23 MR. COTTREAU: Yes.

24 THE COURT: It sounds like we are now talking about a
25 far smaller universe.

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1 MR. COTTREAU: If we are, we are. If we are talking
2 about 400 Taliban names that were on the list that we received
3 from Mr. Carter's colleague which is at Exhibit 2 to our
4 papers, there are, by our account -- some of these names aren't
5 easily identifiable but, by our count, almost 400 individuals
6 in the Taliban. Some joined the Taliban after 9/11. Some
7 people on the list of 2,900 names were 13 years old at the time
8 of 9/11.

9 THE COURT: But their accounts could still be used.

10 MR. COTTREAU: I suppose so but there is no -- I mean
11 even in plaintiff's own -- in their reply brief they talk about
12 what the financial flows are between al Qaeda and the Taliban
13 and they say it is from the al Qaeda to the Taliban to the tune
14 of \$20 million in the annual budget. There is no evidence that
15 the plaintiffs put forward that the Taliban is giving money to
16 al Qaeda or that somehow Taliban accounts throughout the world,
17 there is no allegations in plaintiffs complaint that we had
18 Taliban accounts, there is no allegations in their RICO
19 statements that we had Taliban accounts and what we had, your
20 Honor, was a list of 2,900 names and we have to hand write
21 queries, sequel queries of underlying databases in the legacy
22 system to find out if there is a hit on each one of those
23 names.

24 And so, the question was how do we reasonably cut it
25 back? And so, what happened was we received this list in July,

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1 we analyzed the list and we tried to figure out how can we
2 reasonably cut back the list of 2,900 names to something that's
3 accomplishable?

4 And so, we went through the 9/11 Commission Report,
5 all 567 pages. If a name appeared in the 9/11 Commission
6 Report to have anything to do with 9/11 we kept it on the list
7 and we took all the aliases that were listed in the documents
8 in the list that plaintiffs provided, and we took all the
9 aliases in with it.

10 So, anybody in all 567 pages of the 9/11 Commission
11 Report who is connected in any way to 9/11, we kept them on the
12 list. That gave us a list with the search terms that we had
13 already agreed with plaintiffs to provide of 261 names. And we
14 wrote to plaintiffs on September 8, 2011 and said, hey, this is
15 our methodology, here is what we have done. Let us know.

16 We were up against, at that time, a more pressing
17 document discovery deadline and we wanted to move forward, we
18 then didn't hear anything for two weeks. We wrote to them
19 again and this is these two letters are Exhibits 3 and 4 to our
20 papers, we wrote again to Mr. Carter and said we haven't heard
21 from you, we would like to move forward, we have increased the
22 list to take into account punctuation so if there is an accent
23 that might be recorded as a hyphen after the name or an
24 apostrophe after the name, we have added some additional search
25 terms and here the final list at 261. Essentially, we are

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1 going to move forward unless we hear from you and we haven't
2 heard from you in response to our prior letter. We never
3 heard from them.

4 When they reach out to us -- and this is Exhibit 2
5 with a list of 2,900 names, it is an e-mail from Scott
6 Tarbutton and he attaches the two lists that amount to 2,900
7 names. He ends his e-mail with this: *I fully anticipate that*
8 *the list will be finalized next week once I have an opportunity*
9 *to speak with our translators and have further discussed the*
10 *same and received final approval from our co-plaintiffs. Once*
11 *we provide you with the finalized list, plaintiffs will be in*
12 *touch to discuss the methodology and scope of the record system*
13 *searches to be conducted by DIB.*

14 And that was on July 15th. We wrote back with our
15 alternative methodology at Exhibit 3 on September 8, wrote back
16 two weeks later on September 22nd. Never heard from
17 plaintiffs. They never called up with their finalized list,
18 they never reacted to our initial cut down of the list. They
19 never reacted to 261 terms. We produced the results of those
20 searches and the accounts that were identified in connection
21 with the government inquiries in August of 2012.

22 THE COURT: One of the things you produced, though, is
23 a document that I gather relates to accounts that the U.S.
24 government, perhaps through the UAE Central Bank had requested
25 information about 152 names and there is a document within the

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1 exhibits I have been given which redacts all of those names and
2 I can't for the life of me figure out what the basis for the
3 redaction is.

4 MR. COTTREAU: The basis for the redactions are
5 they're not related to al Qaeda and our responses to those are
6 not simple matters. There are customers who are identified in
7 the responses who may not be the people they're looking for.
8 The government might not -- their response is --

9 THE COURT: Where did the list of 152 names come from
10 originally? I gather that traces back to -- and you may not
11 know the answer -- but I gather it traces back to a U.S.
12 government request?

13 MR. COTTREAU: I don't have any idea. I can speculate
14 that that's the case.

15 THE COURT: Let me interrupt and ask Mr. Carter his
16 understanding.

17 MR. CARTER: Your Honor, I don't know the origin of it
18 but the list specifically identified these individuals as
19 individuals who are members of the Taliban or entities
20 associated with the Taliban and this is the heart of the
21 problem.

22 THE COURT: But I could generate a list that says Jim
23 Kreindler is a member of the Taliban and give it to
24 Mr. Cottreau. There must be some understanding where this list
25 emanates from. The U.S. government?

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1 MR. CARTER: I am sure it is the U.N. sanctions list,
2 your Honor, relatively sure, and the problem is Mr. Cottreau
3 just said we redacted them and didn't do anything because
4 they're not related to al Qaeda. They're Taliban, they are
5 related to al Qaeda and that's the essence of --

6 MR. COTTREAU: The U.N. sanctions 1266 list which is
7 actually attached to Mr. Tarbutton's e-mail at Exhibit 2 to our
8 papers actually distinguishes the list person by person whether
9 they're affiliated with al Qaeda or the Taliban.

10 We had 2,900 names. We weren't going to search all
11 2,900 so we took the following approach. If they're in the
12 9/11 Commission Report, great. If they're not, we have to draw
13 a line somewhere. Then we are free to come back and say draw a
14 different line.

15 THE COURT: Tell me the principal basis for saying we
16 have searched the 9/11 Commission Report and we have also been
17 given a list of 152 names, admittedly prospectively Taliban,
18 not al Qaeda but those (A) we are not searching, but (B) to
19 protect the identity of the account holdings we are withholding
20 the name.

21 MR. COTTREAU: Your Honor, we had the following
22 methodology which we were completely transparent in several
23 pieces of correspondence with the plaintiffs and we were going
24 to take two approaches. One is if a person was identified as
25 being affiliated with al Qaeda in government correspondence and

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1 we had accounts for that person that we identified as part of
2 the process of responding, we would produce.

3 There was never, until I showed up at the hearing,
4 there was never any discussion with plaintiffs ever about other
5 people on other -- other people with other organizations in
6 government correspondence including the Taliban.

7 THE COURT: Are the 152 within the 2,900? Do you
8 know?

9 MR. COTTREAU: I don't know. I don't know.

10 THE COURT: Mr. Carter, do you know?

11 MR. CARTER: I don't, because the 152 have been
12 redacted.

13 THE COURT: Well, that's fair. Fair enough.

14 MR. COTTREAU: There were almost 400 names in the list
15 that they sent on the 2,900 that were related to the Taliban.

16 THE COURT: Okay.

17 MR. COTTREAU: There is the John Smith problem
18 everywhere in the world as I have learned from searching bank
19 records from case to case, and in these pieces of
20 correspondence, your Honor, there are customers who are
21 identified who don't appear to be, *"these aren't the droids*
22 *they're looking for,"* if you will, and this was the Taliban.

23 In all of our discussions we never agreed to search
24 government lists related to Taliban or other organizations or
25 narcotics trafficking. We always agreed -- and I thought this

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1 was the one area until I walked into the hearing today that we
2 had complete agreement on, that we would take government lists
3 that relate to al Qaeda and produce the accounts related to the
4 people on that list. And the only time the Taliban ever came
5 up in any of the discussions before I walked in here today was
6 as part of plaintiff's list of 2,900 names in their July 2011
7 submission which was identified to us as a draft submission and
8 they never submitted a final list of terms.

9 So that's how we got in here and, quite frankly, you
10 know, 400 terms, we have searched 261 that are for al Qaeda and
11 looked through the government list for all core al Qaeda and
12 looked through all the electronic and account opening
13 statements that we have for those accounts. It seems to me
14 that the Taliban issue, 400 names, they're not in the
15 complaint, they're not in the RICO statements, they can't even
16 identify any connection between these 400 names and 9/11 or
17 have any reason to believe that we have any of those 400 names
18 at our bank. It is an enormity of an effort that surpasses the
19 one we have previously done in searching the 261 terms.

20 THE COURT: Why don't you move on to some of the other
21 broad categories like the fatwas and the Sharia board?

22 MR. COTTREAU: Sure.

23 In no particular order, your Honor, but I am going off
24 the list that Mr. Carter generated in my notes, with respect to
25 this alleged meeting in or over about July of 1999 between U.S.

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1 and UAE officials, it was identified initially in plaintiff's
2 discovery request to us as a meeting attended by DIB -- by
3 Dubai Islamic Bank. That was the basis on which we objected to
4 it as ambiguous because we had no idea of any meeting attended
5 by any official at the bank and, indeed, still do not. And we
6 ultimately redefined that term to include meetings that
7 happened between officials at the UAE and the U.S. government.
8 I still don't know what level of government that happened at,
9 if that was the Dubai government, the UAE. The plaintiffs
10 production entire production on that meeting consists of the
11 New York Times article and the State Department briefing and we
12 don't have any more information. Plaintiffs have said we
13 produced nothing. That's not true.

14 In the wake of the July 1999 article we conducted an
15 internal investigation with a gentleman who was there helping
16 with some asset tracing, his name is Robert Ellison. We
17 produced a tremendous amount of correspondence with him. At
18 the time the bank had engaged two U.S. lawyers as part of that
19 asset tracing project and they were around to assist. We
20 waived privilege and produced the correspondence with those two
21 U.S. lawyers Alan Fine, who is a Judge in Miami; and Bill
22 Ritchie.

23 Their notes reveal the steps on the investigation
24 including calling various people in the U.S. government to try
25 to obtain more information about this meeting. They vetted the

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1 issue of whether Osama Bin Laden was a bank customer -- and he
2 wasn't which was the core allegation. They were trying to get
3 more information about who else are you looking for. And all
4 of that is revealed in 101 pages in our production and the
5 plaintiffs -- and I was a little bit surprised to hear we
6 produced almost nothing today because the plaintiffs coincided
7 the 101 pages in their own papers in this case.

8 So, on that meeting we have produced everything we
9 have and, indeed, we have waived privilege on what we did have
10 with these U.S. lawyers who were helping to look into the
11 issue.

12 On the Fatwah and Sharia board -- let me try to
13 explain Islamic banking a little bit. It is governed by a 1985
14 UAE law which we have attached as part of our submission as
15 well. There are special banking laws in the UAE and in many
16 other countries that govern the federal laws to Exhibit 7 to
17 our papers.

18 A Shariah board, its function is to assure Shariah
19 compliance and that means compliance with principles of Islamic
20 law. That usually means a number of things but probably the
21 most animated feature in most of its decision is a concept of
22 Riba which is similar to usury although it can have a broader
23 meaning. Some folks take the view that maybe most folks that
24 it prevents the charging of interest at all.

25 The Shariah board's function isn't to go and find

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1 customers, it is not to approve which customers we do business
2 with, it is to approve transaction forms. It doesn't look at
3 every checking account or, as they call it in the Middle East,
4 a current account. It doesn't look at every savings account to
5 ensure that no interest is being paid in the account. It
6 doesn't approve any customers. It says here is -- when the
7 bank wants to have a certain type of account or product at the
8 bank they say here is the structure of the product and the
9 Shariah board looks at the structure and approves the
10 structure.

11 They may say well, you have to inform the customer for
12 fairness reasons of this, that, and the other, and that gets
13 written into the official product literature which is
14 ultimately issued and then the business people take the idea
15 and run with it.

16 The issue in this case is how do we get these
17 customers and was it intentional that we had these customers
18 because, as you know or may know, Citibank, Sun Trust, HSBC,
19 Chartered Bank all have accounts for people who are related to
20 al Qaeda and, indeed, no one knew who these people were and
21 that's why these people were let into this country, by and
22 large; at least many of these folks, the hijackers.

23 So, in terms of the Shariah board's function, we don't
24 see it as particularly relevant. They don't pass on who our
25 customers are. And what we said to them and what we gave them

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1 in our initial productions were documents sufficient to show
2 the role of the Shariah board and that's what we have produced
3 thus far.

4 We were happy to include also the charter which we
5 attached that spells out that rule for the Shariah board.

6 THE COURT: How about the Fatwahs?

7 MR. COTTREAU: The Fatwahs, your Honor, are --

8 THE COURT: You draw a distinction between those
9 instigated by individuals who may be a member of the Shariah
10 board in their individual capacity and anything that a Shariah
11 board does in its corporate capacity, if I can call it that.

12 MR. COTTREAU: Well, let me try to confirm the term
13 Fatwah.

14 THE COURT: Please.

15 MR. COTTREAU: It is essentially a religious
16 pronouncement, okay, that generally speaking at least under
17 law, banking law has to be done by three or more members
18 together acting together. Every single official Shariah board
19 Fatwah at Dubai Islamic Bank has to be approved by the entirety
20 of the board. They do it by approving transactions. A lot of
21 times they get the customer name, the customer details, the
22 details of the transaction, if it is a one-off type of
23 transaction. This would be a specialized corporate banking
24 transaction, for example.

25 So, there are all kinds of personal details about bank

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1 customers in these documents. Sometimes they're scrubbed,
2 sometimes they're not. But they're all far afield from what we
3 are talking about here which is by and large retail banking for
4 individuals where there is no pronouncement at all by the
5 Shariah board about other than to say you can have a checking
6 account, what they call a current account or savings, what they
7 call an investment account.

8 So, in terms of the pronouncements of the Fatwas, they
9 just don't really have much to do here given the role of the
10 Shariah board at the bank.

11 THE COURT: So, you are saying at least in relation to
12 the official acts of the Shariah board the fatwa is the Dubai
13 equivalent of a corporate resolution?

14 MR. COTTREAU: Yes. They look at the transaction.

15 Proposed is a joint investment because they don't do
16 loans. A joint investment with customer ABC Company. This is
17 not something that we have a stock form for so it is going to
18 be drafted by the lawyers. Here is the draft of the paper, it
19 is a three-year partnership, we are going to contribute this.
20 Our partner is going to contribute that, we are going to share
21 the profits equally or however we are going to share it. That
22 is presented to the Shariah board and they issue a Fatwa saying
23 you can or can't do it or you have to change this about it.

24 Again, they don't identify even those business
25 partners but they essentially have a negative function. They

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1 can essentially veto, if you will, transactions. Any of the
2 bank transactions that occurred which are the transactions that
3 would be relevant in this litigation, any of the bank
4 transactions that occurred weren't as a result of the Shariah
5 board identifying customers or telling anyone that you have to
6 engage in this type of transaction. Their only function in
7 terms of a positive "you have to" has nothing to do with retail
8 banking.

9 So, that's where we are on the Shariah board. We have
10 offered in our papers to also give them a complete list of
11 Shariah board members from 1992 to September 11, 2001 because
12 one of the people that they feature very prominently in their
13 papers with you, your Honor, issuing these personal Fatwas
14 wasn't even on the Shariah board at the time leading up to
15 September 11, 2001. He was added to the board years after and
16 was ultimately -- you know, ultimately finished his service
17 with the board.

18 In terms of the Shariah board, just so your Honor has
19 some understanding of this, Dubai Islamic Bank is the first
20 Islamic bank in the modern world. It was formed in 1975 to
21 offer these products for Muslims who believed that interest was
22 against the teachings of Islam and added its function since
23 1985 has functioned under the Shariah banking law of the UAE.
24 And there are Shariah board members who do this, it is not a
25 full-time job. They come in and they meet and they pronounce

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1 on products periodically and they serve on, in some cases,
2 dozens and dozens of other bank's Shariah boards. These are
3 people who have made a name for themselves of being Islamic
4 scholars, they're usually professors or other scholars and they
5 have something to do with the financial industry, have some
6 status to be able to say what is Shariah complaint and what is
7 not when they act together as a board.

8 THE COURT: So they're not, just out of curiosity,
9 they're not clerics, typically?

10 MR. COTTREAU: I don't believe so. I believe they're
11 more professorial. The head of our Shariah board was a former
12 Egyptian Attorney General.

13 So, these aren't people who -- they come to work, they
14 pronounce on the products and that's their role at the bank and
15 I don't see how it is particularly relevant and never have
16 here.

17 THE COURT: Anything else?

18 MR. COTTREAU: Not unless you have any questions.

19 THE COURT: Not at the moment. Thank you.

20 MR. COTTREAU: Thank you.

21 THE COURT: Anything further, Mr. Carter?

22 MR. CARTER: Briefly a few things, your Honor.

23 Mr. Cottreau has spent quite a bit of time talking
24 about the back and forth around the meet and confer at the
25 beginning of discovery and candidly, your Honor, it is a

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1 diversion that has very little to do with what we are here
2 about today. We are talking about essentially agents, al Qaeda
3 members accounts, Taliban accounts, investigations into the
4 embassy bombings. We are not talking about what ideas the
5 parties exchanged at the time.

6 What I will say about that --

7 THE COURT: Well, there is a little question that the
8 ball got dropped for a considerable period of time.

9 MR. CARTER: Well, your Honor, what I would say about
10 that is --

11 THE COURT: Isn't that fair? Regardless of who may
12 have dropped the ball, a lot of time has passed where virtually
13 nothing has occurred.

14 MR. CARTER: A lot of time did pass, your Honor.

15 What I will say is at the first meeting, in conferring
16 with Mr. Cottreau he is incorrect in suggesting that we did not
17 raise an issue with the Taliban accounts. We had a very
18 spirited discussion about the Taliban accounts as well as
19 accounts DIB maintained for Hamas related entities.

20 As to the Taliban accounts, we made clear our view
21 that they were very directly related to the support of
22 al Qaeda. As to the Hamas accounts, we articulated our view
23 that they were relevant to our DIB defenses. In particular, if
24 it is going to come into court and argue on the merits that it
25 abhors terrorism and would never be associated with a violent

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1 jihadist organization but is maintaining accounts for Hamas, we
2 thought that was relevant and that also going to the Taliban
3 accounts. If you are maintaining accounts for Taliban during
4 the period when United Nations is condemning it for its role in
5 supporting Bin Laden, that's relevant not only to our claims
6 but their defenses.

7 What we decided was it was clear that Dubai Islamic
8 Bank was not willing to go into that territory without court
9 intervention and had decided to conduct the searches it wanted
10 to search. We didn't know of anything about the internal
11 system or what the searches would yield. So, we agreed to wait
12 to see what came back before seeking court intervention.
13 Candidly, your Honor, if they came back with a stack of papers
14 saying here is the transaction that the U.S. government was so
15 worried about that prompted its conversations with the UAE, we
16 may very well have rested on our laurels at that point. It
17 didn't come to pass.

18 With regard to the delay, your Honor, we had always
19 indicated from the outset that we wanted to wait until all of
20 the defendants had produced their documents before moving
21 forward with full scale motion practice and there was a reason
22 to that. We saw interconnectivity among the defendants and in
23 fact, your Honor, one of the recent productions from defendant
24 al Kadi includes a transaction involving an account held by an
25 individual who is identified as a close associate of Bin Laden

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1 at DIB. And so, we sent a supplemental request for that. Most
2 of the delays, your Honor, in going to the phase of motion
3 practice have been related to the other defendants asking for
4 more time to complete their productions.

5 We finished ours in August 2012 as well, but at the
6 end of the day --

7 THE COURT: Well, let's just be clear.

8 In terms of accounts there is the 261 that the bank
9 has proffered generated however. There is the 152 alleged
10 Taliban accounts. There are eight other accounts and I am not
11 sure how to generically describe those and I'm not sure whether
12 they're in the 261.

13 MR. COTTREAU: Your Honor, if I can just clarify?

14 THE COURT: Yes.

15 MR. COTTREAU: The eight accounts are actual accounts
16 found and produced to the plaintiff.

17 THE COURT: Okay.

18 MR. COTTREAU: The 261 are search terms that were
19 agreed upon by the plaintiffs and the defendants and/or that we
20 added from the 9/11 Commission Report as a subset of their
21 2,900.

22 So, the 261 is a combination of names that we had
23 agreed already in our objections to search plus the subset of
24 this 2,900 that was in the 9/11 Commission Report.

25 THE COURT: Okay. So, there are 421 accounts, eight

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1 of which have been produced.

2 MR. COTTREAU: Hold on.

3 THE COURT: The balance of which.

4 MR. COTTREAU: Search terms, not accounts.

5 THE COURT: Okay.

6 MR. COTTREAU: The 152 accounts don't exist and the
7 261 accounts don't exist.

8 THE COURT: So it may well be that the 261 generates
9 fewer accounts.

10 MR. COTTREAU: It may be that it generates no
11 accounts.

12 THE COURT: Right. The 152, on the other hand, are
13 accounts.

14 MR. COTTREAU: No. Not necessarily.

15 THE COURT: Oh okay.

16 MR. COTTREAU: Those are, again, names that were
17 provided in a central bank circular that were affiliated with
18 the Taliban.

19 THE COURT: Okay. Let me then revert back to you,
20 Mr. Carter, and say beyond that universe of 421 today,
21 regardless of how we got there starting with 2,900 what, if
22 anything else, are you looking for?

23 MR. CARTER: Well, your Honor, I think again the 261
24 was the list they generated from the 9/11 Commission.

25 THE COURT: Right.

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1 MR. CARTER: It would have excluded, for instance,
2 al Qaeda members involved in the embassy bombings who just
3 didn't happen to be mentioned in the 9/11 Commission Report
4 which was the case with a lot of people.

5 In terms of the accounts for which we are seeking
6 records, we have identified the specific individuals in the
7 papers. There are eight al Qaeda members and one al Qaeda
8 financier for whom we are seeking the transactional records.
9 Then there is the issue of Taliban accounts.

10 THE COURT: Just so I am clear on that, that's
11 different than the accounts for which some documents have been
12 produced by DIB or those are those accounts?

13 MR. CARTER: Those are those accounts, your Honor, for
14 which we have statements.

15 THE COURT: Okay.

16 MR. CARTER: So, there is a handful of accounts we are
17 seeking more than account statements and a handful of opening
18 documents.

19 The second issue is the Taliban accounts and we still
20 don't have any meaningful production of Taliban accounts
21 whatsoever.

22 Now, on the 152, your Honor, I would simply caution
23 that that is one letter from the UAE. Now, we don't know what
24 is on it, we don't know if it is synonomous with the list
25 that's maintained by the U.N. sanctions and so we would need to

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1 see what that 152 names consisted of to see whether it
2 reconciles with what the United Nations said was the
3 composition of the Taliban as of essentially 9/11 and the
4 period before it.

5 Again, we just haven't seen the names so we don't have
6 an idea on that.

7 The next area relates to the investigations pertaining
8 to DIB accounts implicated in the embassy bombings. One of the
9 logistics people for embassy bombings and procurement expert
10 who was arrested by German authorities had three cards for DIB
11 accounts and then there was separate indications that
12 authorities asked DIB to close, I believe it was, 16 Taliban
13 accounts at that time.

14 So, there is the general issue of Taliban accounts as
15 well as any particular accounts that they were asked to close
16 in the wake of the embassy bombings.

17 Your Honor, there was a comment about cash
18 transactions essentially being irrelevant on the whole. I
19 think I agree with Mr. Cottreau that a debit/cash withdrawal of
20 \$200 is not a big deal. A cash withdrawal of \$40,000 or
21 \$50,000 from a branch that doesn't generate a suspicious
22 activity report may actually be relevant.

23 So, I just simply want to reserve the notion that not
24 every cash transaction might be irrelevant.

25 That's it, your Honor.

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1 THE COURT: Let me try and deal with some of these
2 issues and then we will take a break for a few minutes.

3 Let me start with the accounts that we have been
4 talking about whereas I indicated there are 421 or so accounts
5 or names perhaps also augmented by the accounts that Mr. Carter
6 just spoke about that will relate to the embassy bombings which
7 then there was a specific request that DIB close and perhaps
8 certain other similar requests. For that universe of accounts
9 which I gather is larger than 421 but -- accounts or names
10 which I gather is larger than 421 but probably no larger than
11 500, I am going to direct that to the extent it hasn't already
12 been done, the account opening and if there is any account
13 closing paperwork, the periodic statements and the other
14 electronic information that exists such as the wire transfer
15 information that Mr. Cottreau alluded to, be produced.

16 And I am going to live it to the two sides to talk
17 about a timeline because obviously I don't know what is
18 realistic. If I have to set a date unilaterally I will but I
19 would rather that there be an informed discussion about that
20 and hopefully some agreement.

21 MR. COTTREAU: Your Honor, if I could just interject
22 to clarify one point?

23 THE COURT: Yes.

24 MR. COTTREAU: Because I didn't have a chance to
25 respond to Mr. Carter's suggestion.

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1 THE COURT: Sure.

2 MR. COTTREAU: We have no idea, sitting here today, I
3 have no idea the 16 names that the bank was allegedly asked to
4 close in the wake of the embassy bombings. That's not
5 something that's in any of the papers in this case and it is
6 the first I have ever heard of it.

7 My only suggestion would be so that we can get --
8 completely comply with your Honor's order is this list of not
9 more than 500 names that the plaintiffs have that they just
10 gather it, send it to us as search terms, and we will query our
11 database using those as search terms using the same methodology
12 that we did to do the 261.

13 MR. CARTER: Your Honor, the only hesitation I have is
14 that it is public reporting that indicates that there was a
15 request from the authorities to Dubai Islamic Bank to close the
16 accounts. It doesn't identify what those accounts are. Again,
17 we would have expected that the public reporting of that
18 information would have prompted an internal inquiry that there
19 would have been a communication and so we are asking that that
20 be searched.

21 THE COURT: I presume that this would have been a
22 notification akin to the ones that I have copies of. If the
23 bank is unable to identify it and Mr. Cottreau is nodding in
24 such a way that he indicates they can't, then I guess the onus
25 falls to you to provide them some further information about

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1 those accounts.

2 As you move forward in discovery there are a number of
3 areas like there are in a lot of domestic cases where one side
4 takes the view that there should be some information. I really
5 can't deal with the "there should be" sort of allegations even
6 if I am inclined to agree with whichever side is making that
7 assertion because absent proof that there is such a category of
8 documentation, the notion that there should be doesn't really
9 enable me to take action absent some indication of spoliation.

10 So, for those 500 accounts/names I have indicated what
11 is to be produced in the first instance, and once that's been
12 accomplished there needs to be a discussion quickly by the two
13 sides about what will follow on from that, whether it's akin to
14 what would happen in a domestic circumstance with a grand jury
15 subpoena, namely let's circle these entries and ask you to look
16 at those, whether Mr. Carter and his colleagues circle every
17 entry on every periodic statement and Mr. Cottreau comes back
18 to me and says we will be at this 20 years from now or, you
19 know, it remains to be seen. But, we need to take this first
20 step and then we will see where we go from there.

21 Were you about to say something, Mr. Carter?

22 MR. CARTER: Your Honor, the only comment I had with
23 regard to your Honor's statement about the 16 accounts
24 following the embassy bombings is that DIB's position at this
25 point has been that they're irrelevant and therefore not within

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1 discovery and so all we really need is a verification that the
2 search has been conducted to try and find those accounts or to
3 find the information related to those accounts. I don't know
4 that the discovery responses right now provide us with the
5 simple answer we have searched and are unable to find any
6 information pertaining to this request.

7 MR. COTTREAU: Your Honor, I have never heard the
8 number 16 and I could be mistaken, but I don't believe I have
9 heard that.

10 The only thing that I am aware of that Mr. Carter
11 cited in his papers that supports the notion that this bank was
12 asked to close any accounts is a report in the "L.A. Times"
13 years and years and years after the fact that said that the
14 bank was asked to close certain accounts. It didn't identify
15 the number of them, didn't identify a single name. And so,
16 that's why we are a little bit lost. We have checked our own
17 internal papers to the extent that we have them. We are in a
18 pre-e-mail age and largely a pre-Internet age at the bank and
19 we don't have any records.

20 So, if I could just clarify your Honor's order so I
21 make sure that we can carry it forth precisely? The plaintiffs
22 are going to provide us with a list of not more than 500 names
23 that we will search using the same methodology that we did to
24 search the 261 --

25 THE COURT: Well, no. They can't provide you with the

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1 152 names because they don't know what those names are.

2 MR. COTTREAU: Your Honor, if it would ease this and
3 your Honor wants to order it, just so that we can have
4 precision in the list because the list, to me, is something I
5 can actually accomplish, we will make available, on your
6 Honor's order, the unredacted version of the list of 152 names.

7 THE COURT: Well, that was implicit in what I have
8 said, but yes. So ordered.

9 MR. COTTREAU: So, plaintiffs will provide us a list
10 with 500 names, we will search it using the same methodology
11 that we searched the 261 names, and if there are any accounts
12 for any of those individuals, we will produce the first three
13 items that I talked about out of four items that we have;
14 account opening documentation, complete account statements, and
15 any electronic transaction data that exists in our primary
16 legacy account record keeping system.

17 THE COURT: Except to the extent that the account is
18 still open, perhaps.

19 Well, forget whether it is still open, except to the
20 extent that the non-legacy system also has relevant data. It
21 may not, but.

22 MR. COTTREAU: The legacy system covers the period
23 that we have agreed and maybe that's one thing that is missing
24 from your Honor's order. We agreed to produce and the
25 plaintiffs have never objected, all account statements from

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1 1992, January 1, 1992 through September 11, 2001. And that's
2 what we have used in this case with plaintiffs, that's what we
3 have used beginning in 2012 when we produced account statements
4 and that's what they have already.

5 THE COURT: Well, I am sure they don't object to the
6 onset data.

7 What is your position on the end date?

8 MR. CARTER: The only problem with the end date, your
9 Honor, is it is not going to reflect accounts being frozen or
10 investigation of accounts immediately after 9/11 so I think if
11 we carry that date forward simply to the traditional deadline
12 we have used which is 2004, we would be fine.

13 THE COURT: I think that's reasonable, Mr. Cottreau.

14 MR. COTTREAU: So, through 12/31/2004?

15 THE COURT: Precisely.

16 In terms of the Shariah board, I do think that the
17 requests -- and we are dealing with concepts rather than
18 specific requests today, do strike me as overbroad.

19 In terms of the Fatwahs that are not banking related,
20 we didn't talk about this in great detail but the plaintiff's
21 papers suggest that there were some people who are actively
22 supporting terrorism who have been affiliated with the Shariah
23 board over time. The bank has either produced or offered to
24 produce the individuals who were on the board for the relevant
25 time period.

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1 The plaintiffs, from that list, may identify specific
2 individuals who they have reason to believe, perhaps in their
3 individual capacity have either individually or together with
4 others, issued Fatwahs which are of interest because they're
5 not routine banking Fatwahs but these individuals and others
6 going off in a different direction and to the extent that the
7 plaintiffs do that, I will require the bank to produce any
8 information that it has.

9 The fact that somebody may have acted in their
10 individual capacity is largely irrelevant if the bank has
11 evidence that relates to those acts undertaken in the
12 individual capacity. So, I hope that instruction is
13 intelligible.

14 MR. COTTREAU: Your Honor, if I can clarify it to make
15 sure I have it?

16 THE COURT: Sure.

17 MR. COTTREAU: The Fatwahs that the plaintiffs have
18 produced are, in some cases, web postings on these individuals'
19 personal websites. Those aren't bank records, we don't -- by
20 and large I hear you that we should check our records to make
21 sure we don't maintain a copy but that's our obligation --

22 THE COURT: Well, let me rephrase it. It would be to
23 undertake a reasonable search to find such documents.

24 MR. COTTREAU: If we have Fatwahs related to violent
25 pronouncements of those individuals?

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1 THE COURT: Yes. I think that's the gist of it.

2 MR. COTTREAU: Okay.

3 MR. CARTER: I think that's the gist of it, your
4 Honor. The language doesn't always say violence.

5 THE COURT: Right.

6 I am looking through my notes but, Mr. Carter, are
7 there other broad categories I should be addressing?

8 MR. CARTER: Your Honor, the only other area is
9 whether or not there is information about investigations of DIB
10 pertaining to the embassy bombings and this '99 meeting, and in
11 particular with respect to the '99 meeting whether or not a
12 search has been conducted to truly identify everything that
13 exists and, second, whether or not DIB has the practical
14 ability to find out what was going on at that meeting by virtue
15 of its relation to the government.

16 THE COURT: Well, some of that was covered by my
17 comments about the fact that because something may be
18 implausible doesn't give anyone the ability to take steps of
19 any sort. Presumably, as discovery moves forward, there will
20 be depositions at some stage and if something concrete occurs
21 then you can bring it back to the Court.

22 In terms of the 1999 meeting, we talked about that.
23 What was the other one you mentioned?

24 MR. CARTER: The embassy bombings investigation, your
25 Honor.

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1 THE COURT: I take it the bank's position is it has
2 undertaken a good faith search for such documents?

3 MR. COTTREAU: Your Honor, yes.

4 THE COURT: And produced anything it has?

5 MR. COTTREAU: Yes.

6 THE COURT: So, that falls into the ruling I just
7 made. At this juncture there is not much more I can do.

8 MR. CARTER: Your Honor --

9 MR. COTTREAU: Your Honor, I just want to make sure
10 that I understood your question.

11 With respect to the embassy bombings, are we talking
12 about the 16 names or --

13 THE COURT: No. We are talking about, I believe,
14 investigations or other responses that the bank internally may
15 have had in terms of checking whether it had troublesome
16 accounts or relationships. And I gather you have made that
17 inquiry and produced anything you could find.

18 MR. COTTREAU: I don't think we have produced on that
19 topic, your Honor.

20 THE COURT: What's the basis for withholding that?

21 MR. COTTREAU: The basis that we were trying to do on
22 this was in the midst of 108 requests so it is not something
23 that we did in isolation. In the context of 108 requests and
24 the 2,900 names, as we were having these discussions with
25 plaintiffs, we had to draw a line.

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1 THE COURT: Okay.

2 MR. COTTREAU: And the line that we suggested that be
3 taken was that the 9/11 Commission Report had identified that
4 the real planning for 9/11 began when Khalid Sheikh Mohammed
5 joined al Qaeda in late 1998 or early 1999 and that we would do
6 a fulsome search of al Qaeda-related documents after that date.

7 THE COURT: Okay. And as to that issue, the one we
8 are talking about, I am inclined to agree with the plaintiffs.
9 So, there you need to expand the search and I gather there are
10 documents that will be produced as a result.

11 MR. CARTER: Your Honor, the only remaining issue is
12 with regard to the 1999 meeting, it is not merely an issue of
13 whether DIB has searched its internal records, there is also
14 this issue of whether or not, given its relationship, it has
15 the practical ability.

16 I think one of the areas of concern we have is you
17 have a member of the Maktoum family who is the prime minister
18 of UAE and also the largest shareholder of Dubai Islamic Bank
19 and does he attend the meeting, perhaps, with the U.S.
20 officials in his capacity as an official and then disclaim the
21 knowledge in his capacity as the primary shareholder of DIB.

22 And so, we are just trying to assess whether or not
23 there is a practical ability to get this information.

24 THE COURT: Mr. Cottreau?

25 MR. COTTREAU: I don't know of any way to get the

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1 information. The shareholders of the bank were now 27 percent
2 owned by something called the Investment Corporation of Dubai
3 which I understand is an investment instrument of the ruling
4 family of Dubai. But, in terms of this 1999 meeting, as I
5 tried to express today, I don't even know where the meeting
6 happened. It would strike me that one possibility and one
7 logical possibility is that it happened at the UAE Central Bank
8 which is in Abu Dhabi and had nothing to do with the government
9 of Dubai itself. But, as a practical matter, I don't have any
10 way of accessing any records.

11 THE COURT: I am not going to make a direction as to
12 that because I think it is a complicated area and there are
13 issues of sovereign immunity and we will deal with that as we
14 go down the road.

15 Let's take a 10-minute break and just so you can tee
16 up what is next, the charity defendants.

17 MR. COTTREAU: Thank you, your Honor.

18 THE COURT: Sure.

19 (Recess)

20 THE COURT: Let's go to the central charity
21 defendants, the gang of four.

22 MR. CARTER: You are stuck with me for one more, your
23 Honor, and then I am going to turn it over to Mr. Haefele for a
24 while.

25 THE COURT: Thank goodness.

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1 MR. CARTER: Yes, I agree.

2 Your Honor, the four charity official defendants were,
3 as you know, remanded by the Second Circuit through its
4 decision in 2013 in which the Court held that the allegations
5 concerning those defendants were always with the charities
6 which they controlled gave rise to the inference that they
7 conducted their tortious conduct at the United States business
8 directing support to al Qaeda through charities under their
9 command. And so, the Second Circuit remanded the claims
10 essentially for discovery relating to the nature of their roles
11 and the kinds of decisions they were responsible for making
12 within the charitable organizations they controlled and
13 supervised.

14 To date, the four charity officials have produced
15 virtually no documents in response to plaintiff's discovery
16 requests. In total, the four defendants have produced a mere
17 82 pages and those consist largely of the affidavits and
18 biographical statements they had earlier filed in the
19 litigation in support of their motions to dismiss in which,
20 among other things, several of them claimed that they were
21 officials of Saudi government entitled to claim sovereign
22 immunity, a defense that they have since withdrawn.

23 The charity officials seek to excuse their failure to
24 produce documents by arguing that certain of the charities that
25 are also defendants in the litigation have received similar

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1 document requests and are producing documents, and that
2 plaintiffs should look exclusively to those productions in
3 relation to the discovery we are seeking from the individuals.

4 Obviously, your Honor, the rules require that the
5 defendants respond individually to the document requests
6 directed to them and the fact that other defendants may or may
7 not be producing documents relating to the same areas of
8 inquiry does not relieve them of their independent discovery
9 obligations.

10 The related problem is that even if a party to
11 litigation could rely on the separate discovery responses of
12 another party to satisfy its obligations, the reality is that
13 many of the charities these officials had roles in are not
14 meaningfully participating in discovery at all. So, for
15 example, your Honor, Abdullah Naseef was not merely the
16 secretary of the Muslim World League, he also founded
17 Rabidi Trust and that, your Honor will recall, was designated
18 by the United States government, failed to participate in
19 discovery in the case, and was ultimately defaulted by this
20 Court.

21 Naseef also had relationships with individuals of
22 considerable interest. For example, he was responsible for
23 appointing Wael Jelaidain to his position in the Muslim World
24 League; also responsible for appointing Osama Bin Laden's
25 brother-in-law, Mohammed Jamal Khalifa to the designated IIRO

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1 branch in the Philippines. Abdullah Bin Saleh Obaid was, in
2 addition to his secretary of Muslim World League also an
3 officer of Rabidi Trust and of many of the Sanabel entities
4 that were incorporated in the items.

5 Your Honor will recall that the Sanabel entities in
6 the United States have stated that they no longer have any
7 records relating to the periods of greatest interest including
8 the period when Obaid was an officer of the entity, Abdullah
9 bin Muhsen al Turki, your Honor, is currently the head of the
10 Muslim World League and therefore in a position to direct that
11 entity to respond to request relating to his position.

12 Before that, he was the Saudi Minister of Islamic
13 Affairs from 1993 to 1999. In that capacity he had a
14 supervisory role over all of the kingdom's proselytizing
15 organizations according to the 9/11 Commission, the Muslim
16 World League, the International World Islamic Relief
17 Organization, the World Assembly of Muslims and al-Haramain
18 Islamic Foundation.

19 We also know, your Honor, that al-Haramain filed an
20 affidavit early in the case when it was still participating in
21 which it specifically stated that al-Haramain works under the
22 supervision of the Audi Minister of Islamic affairs who
23 appoints its board members and senior management personnel.

24 And, again, al-Haramain Saudi Arabia is no longer
25 participating in the proceedings.

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1 So, there are a range of relationships and roles that
2 extend beyond those pertaining to the handful of charities that
3 are participating in discovery and the fact that those
4 charities are participating in discovery does not relieve the
5 defendants of their obligation to produce their own records.

6 I think, your Honor, we are reminded of the therefore
7 with Mr. Jelaidain where the Court ultimately issued an order
8 requiring him to undertake a full-court press not only to
9 locate documents within his physical custody, but under his
10 care and control. And, it is warranted here.

11 In all candor, your Honor, we have some concern that
12 these defendants have not undertaken searches of their own
13 records precisely because they think it would reflect the
14 nature of their dealings, among others, with senior Saudi
15 officials.

16 The position these individuals held with these
17 charitable organizations and in the Saudi government are
18 positions of tremendous distinction within the kingdom and
19 within the Islamic world. By way of an example, your Honor,
20 the MWL -- Muslim World League -- recently produced a document
21 pertaining to defendant al Turki's appointment as the head of
22 the Muslim World League in which the King equates it to being
23 appointed as a minister of the Saudi state.

24 These individuals have, in addition to the roles of
25 the charities, held very senior government positions -- the

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1 Shariah council, the Supreme Council for Islamic Affairs. In
2 fact, the head of the Muslim World League automatically sits on
3 the Supreme Council of Islamic Affairs.

4 THE COURT: Say that again.

5 MR. CARTER: The head of the Muslim World League sits,
6 by automatic designation -- or sat, I should say -- on the
7 Supreme Council for Islamic affairs. It is our understanding
8 that the current King has disbanded the Supreme Council for
9 Islamic affairs more recently. But, in all years prior,
10 automatically sat.

11 We know a fair amount, your Honor, about how decisions
12 are made within these organizations from our own
13 investigations. The Council for Islamic Affairs is or was the
14 policy making body responsible for formulating Saudi Arabia's
15 Islamic policy abroad. A principal component of its foreign
16 policy, according to affidavits the kingdom filed in the
17 litigation, the ministry of Islamic affairs, in turn, was the
18 operational body responsible for deploying that strategy
19 principally through these ostensible charitable organizations
20 and so we have close coordination at the highest levels and at
21 the levels that these particular defendants would have operated
22 with very senior officials about making decisions about how
23 they were going to operate.

24 We are additionally concerned, your Honor, based on
25 the fact that you will recall that Sameer al Radhi of the IIRO

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1 filed an affidavit at one point way back in 2011 stating that
2 the IIRO had two kinds of documents; public documents and
3 documents that were protected from discovery by virtue of the
4 king and his immunity.

5 Now, again, that objection was withdrawn entirely but
6 it does indicate a certain desire to protect certain categories
7 of documents relating to the activities of the charities from
8 disclosure because of the governmental character. There is
9 just no basis to do that.

10 I think, your Honor, there was a recent article in the
11 New York Times in September of 2015 that underscores the issue
12 and that I shared with Mr. Kabat in advance of the hearings.
13 It was issued in September of 2015 and describes the kingdom's
14 efforts to both spread a certain variant of Islam and use those
15 efforts to counter Iranian influence and describes the very
16 close coordination within the Saudi government in doing that.

17 The report indicates that the documents describe an
18 extensive apparatus inside the Saudi government dedicated to
19 missionary activity that brings in officials from the foreign
20 interior and Islamic affairs ministry, the intelligence
21 service, and the office of the king. It goes on to say the
22 intelligence agency, sometime potentially the Saudi-supported
23 Muslim World League helps coordinate strategy.

24 And so, what we understand from all of the information
25 we have gathered largely on our own that these are very

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1 significant positions of respect and of achievement relative to
2 which these individuals interacted, traveled with, met with
3 some of the most senior officials of the Saudi government, as
4 well as foreign dignitaries. People who reach that level of
5 accomplishment maintain some record of their life's work, your
6 Honor, and we are to believe that all four of these individuals
7 are so devoid of any interest in their own accomplishments that
8 they haven't retained a single record responsive to plaintiff's
9 requests? That simply can't be the case. They routinely gave
10 speeches at international conferences, they attended world
11 summits, they met with world leaders. They have some records
12 in their possession that are responsive and we would simply ask
13 that they be directed to undertake the reasonable and necessary
14 efforts to collect them and produce them.

15 Thank you, your Honor.

16 THE COURT: Thank you.

17 Mr. Kabat, why don't you use the microphone over
18 there.

19 MR. KABAT: Your Honor, again, we need context of the
20 discovery.

21 What plaintiffs have not told you is that they served
22 a total of 129 document requests on the four charity officers
23 but of those 129 requests, 97 were identical or substantively
24 identical to the merits discovery request that they served on
25 the Muslim World League and the IIRO.

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1 Plaintiffs have yet to explain why the merits
2 discovery being served on the charities is the same or
3 justified as jurisdictional discovery to be served on the
4 individual defendants because the Second Circuit's opinion was
5 quite clear as to the basis for remanding those four charity
6 officers. As we pointed out in our opposition, the Second
7 Circuit identified five areas and the first area was, quote,
8 whether they allegedly controlled and managed some of those
9 charitable organizations was definitely not a matter of much
10 dispute because the position that these individuals held with
11 each charity is a public record. But, the remaining four
12 categories to the Second Circuit identified are quite narrow,
13 namely, whether through their positions of control of the
14 sureties they allegedly send financial and other material
15 support directly to al Qaeda, whether they directly provided
16 financial and other resources to al Qaeda knowing that al Qaeda
17 was engaged in global campaign, whether this support was
18 "expressly aimed at the United States."

19 Those are the areas that are properly the subject of
20 jurisdictional discovery.

21 THE COURT: Although Mr. Carter would tell me that the
22 list is preceded by a "for example," correct?

23 MR. KABAT: By what?

24 THE COURT: By the phrase "for example."

25 MR. KABAT: The plaintiffs have never told us how

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1 those 129 requests, the vast majority of them they simply cut
2 and paste from the merits discovery are relevant to
3 jurisdictional discovery.

4 THE COURT: Well, your response reduced to a sentence
5 or two is if there are responsive documents they're in the
6 MWL/IRRO production, correct?

7 MR. KABAT: Yes, largely because they're identical
8 document requests seeking documents of the sureties.

9 THE COURT: Well, I guess the follow-on question is
10 have you been through those document productions?

11 MR. KABAT: I have reviewed them. Not every page
12 because there is some 460,000 pages but I would note, and again
13 what plaintiffs fail to mention is the Muslim World League and
14 the IIRO have done incredibly detailed index documents which
15 they gave to the plaintiffs.

16 And if I may give you an example of one of the
17 indexes?

18 THE COURT: Yes.

19 MR. KABAT: This happens to be the index for their
20 most recent production, the December 19, 2014 index, and you
21 will see it indicates for each set of documents the document
22 request that it is responsive to, and in our opposition to the
23 motion to compel we gave the Court -- it is Exhibit 1 to our
24 opposition -- we indicated, for example, al Turki request
25 number is the same as Muslim World League no. 50.

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1 Now, what we could do, it would be an exercise in
2 busy-work, is we could take these indexes and we could simply
3 add the al Turki document requests, the Basha document
4 requests, so forth --

5 THE COURT: But that begs the question of whether your
6 clients, as opposed to Muslim World League or IIRO, have other
7 documents that relate to those requests. As I understand it
8 you are taking the position if there is something responsive it
9 must have been produced by those two entities so therefore we
10 don't have to look.

11 MR. KABAT: It is not quite that simple, your Honor.

12 In a sense what plaintiff has done here is they put
13 the cart before the horse. They came to this Court saying we
14 want discovery responses to all of these 129 requests that were
15 served on each of the four defendants. At no time did
16 plaintiff attempt a meet and confer unlike for other
17 defendants. They never sent us the discovery deficiency
18 letter. They never arranged for a meet and confer where we
19 could go over these requests and figure out which ones were
20 relevant to jurisdictional discovery.

21 THE COURT: Well, did you ever file a formal response?

22 MR. KABAT: What?

23 THE COURT: Did you ever file -- let me rephrase it.

24 Did you ever serve a formal response to their Rule 34
25 requests?

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1 MR. KABAT: Yes, we did, and those are in the exhibits
2 and that was quite a few years back.

3 I mean, Rule 71 expressly requires a meet and confer
4 and plaintiffs, in fact they did meet and confer in our office
5 10 years ago with respect to Al Haramain so plaintiff's counsel
6 knows how to do a meet and confer, they know how to do
7 discovery deficiency letters, yet they deliberately chose not
8 to do so with respect to these four defendants.

9 Now, there are two categories of documents that we
10 discuss in our opposition that were not fully covered by the
11 Muslim World League and IIRO document requests. One is the
12 relationship between the charity and the Saudi government.

13 What plaintiffs don't tell you is that Muslim World
14 League and IIRO collectively produced over 14,000 pages of
15 documents relevant in relationship between the surety and the
16 Saudi government and there is really no basis for the plaintiff
17 to argue that Dr. al Turki has produced the Muslim World League
18 documents relating to the Saudi government when there is some
19 14,000 pages and to the extent the plaintiffs believe that
20 there are some documents they are not included within those
21 14,000 pages that they seek from the Muslim World League. As
22 we know, they should file a motion to compel or seek them from
23 the Muslim World League.

24 Judge Daniels, in his ruling in November, rejected the
25 plaintiff's attempt to link the Saudi government to the

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1 sureties because there is no evidence of day-to-day control and
2 it appeared that the only reason the plaintiffs are really
3 seeking this discovery from the four defendants is not to prove
4 their liability, instead it is a backdoor way to get the
5 government back in the case. An example of that was yesterday
6 Mr. Carter sent me an article from the New York Times which he
7 said he was going to rely upon today. That article actually
8 came out in July of 2015, it is based on Wikileaks which is
9 double hearsay --

10 THE COURT: It is based on what?

11 MR. KABAT: Wikileaks --

12 THE COURT: Okay.

13 MR. KABAT: -- which of course is double hearsay, but
14 the article that Mr. Carter gave me yesterday and aid he was
15 going to rely on specifically says the documents do not show
16 any Saudi support for militant activity.

17 That's what Mr. Carter wanted to rely upon today.

18 The last point I want to make is that plaintiffs, in
19 their document requests, had numerous requests relating to the
20 golden chain which he may remember from years ago when Judge
21 Casey had this case --

22 THE COURT: Let me save you some time. I'm not going
23 to require the production of any documents related to the
24 golden chain so we can move on from there.

25 MR. KABAT: Thank you.

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1 But that illustrates why it would have been helpful to
2 have a meet and confer with the plaintiff's counsel, so we
3 could go over these categories instead of having to argue all
4 129 document requests. And, again, we are still willing to
5 engage in the meet and confer but what the plaintiffs have done
6 is put the cart before the horse, file the motion to compel
7 without doing discovery, without doing a meet and confer.
8 While we are happy to go back and look at the Muslim World
9 League indexes and see which documents relates to our four
10 clients, we think the burden is on plaintiff to have the meet
11 and confer, to identify those few requests that are relevant to
12 jurisdictional discovery as opposed to merit discovery, and
13 then we will move from there.

14 Thank you.

15 THE COURT: Two of your global objections at nos. 5
16 and 6, 5 objects to documents concerning communications by,
17 with, or from the kingdom or its agencies, etc.; and 6 objects
18 to production of documents that are business records of the
19 Muslim World League or IIRO. Since those records are the
20 corporate property of those -- I am paraphrasing -- those
21 entities and the defendants lack personal possession of those
22 records, taking those one at a time, is it your position that
23 if a document that's responsive to a request reflects a
24 communication with the government, even though it is held by
25 one of your clients in his personal possession, it's to be

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1 withheld on sovereign immunity grounds?

2 MR. KABAT: No, we have not made that argument.

3 THE COURT: It is an objection you have listed.

4 And, similarly, are you taking the position that if
5 one of your four clients has in his personal possession a
6 record which is a business record of one of those two
7 charities, that it doesn't have to produce it because the
8 record, in some fashion, belongs to MWL or IIRO?

9 MR. KABAT: It is my understanding that the individual
10 defendants do not have Muslim World League or IIRO records in
11 their personal possession. Only two of them are in fact
12 currently with the Muslim World League, the other two have been
13 long gone, and so while they have an office -- two of them have
14 an office in the Muslim World League there may be file cabinets
15 and such, Muslim World League has gone through those file
16 cabinets and so forth but they don't have the documents at home
17 if that's what you are getting at.

18 THE COURT: Do you know whether to respond to the Rule
19 34 request to the charities their individual records were
20 searched?

21 MR. KABAT: It's my understanding that they were.

22 And getting back to your first question about the
23 Saudi government issue, the point I was making there or the
24 objection we were making is that the individuals do not have in
25 their personal capacity, like at home or separate from the

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1 Muslim World League, Saudi government documents relating to the
2 Muslim World League/Saudi relationship. Those documents would
3 be within the 14,000 pages that the Muslim World League and the
4 IIRO have produced that specifically relates to the Saudi
5 government.

6 Thank you.

7 THE COURT: Mr. Carter?

8 MR. CARTER: Your Honor, a few things.

9 Mr. Kabat made much of the overlap between the
10 discovery served on the charity official defendants and the
11 discovery served on Muslim World League and IIRO.

12 After the Second Circuit remanded the charity official
13 defendants we did two things, we served discovery requests on
14 the individual charity official defendants and we served
15 supplemental discovery requests on the Muslim World League and
16 IIRO and other charities relating to the activities of those
17 individuals as officials.

18 Essentially what happened is that the charity official
19 defendants said go look solely to what they give you and the
20 charity said these are untimely because the cutoff was August
21 2012.

22 Now, I am not at all interested in pre litigating any
23 disputes with regard to the Muslim World League or IIRO but at
24 least the origins of this presented as a bit of a shell game.
25 Now, the Muslim World League and IIRO have produced some

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1 documents that reflect activities of these individuals. We do
2 not think it is at all complete. Again, we will address the
3 sufficiency of their productions with those defendants.

4 THE COURT: How about Mr. Kabat's argument that there
5 has been no meet and confer here?

6 MR. CARTER: Your Honor, we laid out in our reply
7 brief at page 3 that we raised this at multiple hearings in
8 multiple letters to the Court and there was a consistent
9 response: *Go look for their stuff.* And so we came to the
10 Court to say that is not sufficient. That was our point all
11 along.

12 So, we went down this road for a while. There simply
13 isn't an indication on the record, affirmative, in a response,
14 I have searched all of the records in my possession, custody,
15 or control and you have everything responsive to your discovery
16 requests. And again, we don't want to end up at a deposition
17 and have one of these individuals say, well, of course I
18 maintained a diary during the time that I was Muslim World
19 League Secretary, or of course I have copies of all the
20 speeches I wrote and Fatwahs I issued during that time, or of
21 course I have a copy of my passport from those periods.

22 As an example, your Honor, there is an allegation
23 based on US government investigations that Abdullah Omar Naseef
24 was present at the founding meeting of al Qaeda with Bin Laden
25 in the Sudan. The travels of these individuals, as reflected

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1 by their passports, are relevant.

2 To the extent they have received letters of
3 commendation or similar awards that have lauded their
4 activities during their service and outlined what they did, you
5 would have expected them to be kept. One of them received the
6 King Faisal award for service to Islam. That would describe
7 what that person did.

8 THE COURT: How does that add to the jurisdictional
9 discovery?

10 MR. CARTER: I think the proper question in the
11 jurisdictional discovery was what did these individuals do at
12 these charitable organizations, what was the nature of their
13 roles. I can give you an example, your Honor.

14 In our own investigations we have, by way of example,
15 a report in the Arabic version of the Muslim World League
16 Journal dating to the period in 1992 where defendant Naseef
17 attends a meeting with members of the royal family and the
18 Saudi Grand Mufti, who is the government official during which
19 Naseef thanks the King for the generous support of the Muslim
20 World League and the Grand Mufti indicated the jihad fighters
21 must be encouraged worldwide. A year later Naseef again thanks
22 King Fahd for a donation of 20 million given for Muslims in
23 Bosnia so they could continue their legal jihad against the
24 Serbs.

25 So, these kinds of dialogues about policy issues,

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1 global events, are very relevant to the determination as to
2 whether or not these individuals were responsible for setting
3 in motion the program of support we have described in other
4 pleadings. And, again, it is a matter of them going and
5 searching their own records in the same way that the Court
6 directed defendant Jelaidain to do so.

7 Thank you, your Honor.

8 THE COURT: How about the passports, Mr. Kabat?

9 MR. KABAT: I can ask him for that but I think the
10 proper way --

11 THE COURT: I gather there was a specific request that
12 asked for those. What was your response to that request?

13 MR. KABAT: I don't --

14 THE COURT: Mr. Carter, can you point me in the right
15 direction here?

16 MR. KABAT: Again, your Honor --

17 THE COURT: Hang on just a minute.

18 MR. CARTER: I think in a moment we will be able to.
19 I know there were requests relating to travel to places like
20 Sudan, Afghanistan, Pakistan during relevant periods and,
21 again, that certainly would have encompassed a passport.

22 THE COURT: I thought there was a specific reference
23 to supports in the request.

24 MR. CARTER: There probably was. But I think, your
25 Honor, regardless of the individual request, the overarching

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1 response was go look at what the charities produced. And what
2 we are really here about is compelling the defendants to
3 conduct their own searches.

4 MR. KABAT: Your Honor, regardless of whether the
5 request asked for the passport, the reality is the plaintiffs
6 simply cut and pasted their merits discovery into the four
7 individual defendants and they have not bothered -- they have
8 not bothered -- to meet with us, to send us a discovery
9 deficiency letter, completely at all with Rule 37 meet and
10 confer requirement.

11 THE COURT: Well, but the passports would seem to be
12 something that the charities would not have produced that
13 perhaps -- well, I don't see one that relates to passports but
14 I do see 89: Provide all documents relating to any trips you
15 took to Sudan; and 90 is the same for trips to Afghanistan.
16 Let me take a moment and look at the responses.

17 (pause)

18 THE COURT: Unfortunately they don't track from
19 defendant to defendant.

20 (pause)

21 THE COURT: Well, here. For 89 and 90 the answer to
22 both is: See objections to document request no. 10. Document
23 request no. 10 says: Defendant objects to this request as
24 overly broad seeking documents relating to his employment with
25 the government of the Kingdom of Saudi Arabia which has

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1 sovereign immunity; improperly seeks official records of the
2 Saudi government; improperly seeks business records of the MWL
3 and IRRO; and goes on and on. And going back to the specific
4 answers it says: Defendant will produce responsive documents,
5 if any, when available.

6 So, I think what I am going to do is, first of all,
7 invoke the current version of Rule 34 -- bear with me a
8 second -- which requires that an objection state
9 specifically -- let me read it: *An objection must state*
10 *whether any responsive materials are being withheld on the*
11 *basis of that objection.*

12 So, I am going to require several things. First, a
13 sworn or affirmed certification from each of the four charity
14 defendants that except to the extent to which they have
15 specified that a document is being withheld, they have produced
16 all documents responsive to the requests unless those documents
17 are part of the productions of the MWL or IIRO. Secondly, that
18 there be a privilege log if there are documents being withheld
19 on the basis of privilege.

20 I think at the moment that's all I need direct with
21 respect to the motion related to these four defendants.

22 Is there something else you seek, Mr. Carter, at the
23 moment?

24 MR. CARTER: Your Honor, only based on the response
25 that you read to the request, which very much seemed to invoke

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1 a sovereign immunity defense with respect to documents
2 potentially in the possession of these defendants and Mr. Kabat
3 had said that no such objection was being asserted and I think
4 we just want clarification that there is no sovereign immunity
5 objection being asserted.

6 MR. KABAT: No, we are not asserting that defense with
7 respect to their own documents but I do have a question for
8 you.

9 THE COURT: Let me just add that within the documents
10 to be listed on a privilege log are any documents being
11 withheld on sovereign immunity grounds that are responsive but
12 I gather you just told me that there are no such documents.

13 MR. KABAT: Well, I will check with the clients,
14 obviously.

15 I do have two questions for you.

16 THE COURT: Sure.

17 MR. KABAT: First of all, you said that the requests
18 related to the golden chain are off the table.

19 THE COURT: Correct.

20 MR. KABAT: Now, of the remaining hundred-odd
21 requests, are you directing us to answer all of them regardless
22 of whether they have anything to do with jurisdictional
23 discovery? I think it should be a little more focused on those
24 requests that relate to jurisdictional discovery as opposed to
25 the hundred-odd requests, many of which really are merits

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1 discovery and we have not undertaken a search for that.

2 THE COURT: Well, I think by invoking the provision of
3 Rule 34 that I have directed you to comply with, it will become
4 clear whether you are withholding documents. I think there may
5 be categories of documents or requests as to which your
6 response is we have nothing beyond what the corporate charities
7 have produced and therefore there is not much point in worrying
8 about whether the request relates to jurisdictional or merits
9 discovery.

10 If, at the end of the process I have just directed
11 there are lingering issues, you can bring those back to the
12 Court or Mr. Carter can, but I think for the moment this takes
13 us further down the road.

14 MR. KABAT: Thank you.

15 MR. CARTER: Thank you, your Honor.

16 THE COURT: You said you had two points?

17 MR. KABAT: Pardon?

18 THE COURT: I guess the other was the golden chain.

19 Thank you.

20 MR. CARTER: Your Honor, I'm sorry.

21 THE COURT: Yes.

22 MR. CARTER: With regard to the golden chain, and I
23 don't want to belabor this point because I understand the
24 Court's ruling, but there are people on the golden chain other
25 than the contributors, for instance Wael Jelaidain is listed on

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1 the golden chain, Osama Bin Laden is listed on the golden
2 chain. And so, we just want clarity that you are not talking
3 about those people.

4 THE COURT: That's correct.

5 MR. CARTER: Thank you.

6 THE COURT: I am talking specifically about the
7 requests that use the phrase "and seek those documents."

8 MR. CARTER: Thank you, your Honor.

9 THE COURT: So, if there were other more specific
10 requests, those, of course, are not affected by that ruling.

11 MR. CARTER: Thank you, your Honor.

12 THE COURT: We can break for lunch now or we can deal
13 with the next one.

14 Mr. Haefele?

15 MR. HAEFELE: I leave it up to you, your Honor.

16 THE COURT: Why don't we move on.

17 Okay. Fire away, Mr. Haefele.

18 MR. HAEFELE: Your Honor, I think it is a good
19 afternoon at this point. We made it past, into the afternoon.

20 Robert Haefele from Motley Rice for the plaintiffs,
21 your Honor. I am here to talk about the plaintiff's motion
22 regarding Soliman Al-Buthe.

23 Much of what Mr. Charter had to say about the other
24 charity officials applies also to Mr. Al-Buthe and I refer back
25 to the dialogue that you had with Mr. Carter for what was said

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1 for those defendants that crosses over to Mr. Al-Buthe and I
2 will stick, hopefully, with the stuff that is particular to
3 Mr. Al-Buthe.

4 What I understand that we are here to discuss is the
5 remedy that is sought by the motion that the plaintiffs filed
6 was under Rule 37(a) for an order compelling Mr. Al-Buthe to
7 produce documents and information responsive to the discovery
8 requests served on August 22, 2013, and the plaintiffs also
9 requested consistent with what your Honor did with
10 Mr. Jelaidain, that there be production verifying that the
11 defendants and his counsel moved to undertake vigorous efforts
12 to produce documents.

13 THE COURT: I was about to ask you whether you want
14 something beyond what I just ruled with respect to the
15 charitable defendants.

16 MR. HAEFELE: Your Honor, I think I didn't make all of
17 my notes and I didn't review my notes from what you had and I
18 think the answer is probably, to some extent, yes, we are
19 asking for that response.

20 One of the things we did in this, your Honor, is we
21 did go through and did articulate why each and every one of the
22 requests that we did for Mr. Al-Buthe -- and they were
23 distinct, I believe, from the ones on the other charitable
24 defendant I compared partly because Mr. Carter was taking care
25 of that motion, I didn't actually compare the requests and they

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1 were done separately so I do think the requests are separate.

2 I will give you a for instance.

3 I do know that with regard to Mr. Al-Buthe there is a
4 very specific request that relates to the request for his
5 passport and that's request for production 19 which very
6 specifically says not only his passport but identifies some of
7 the passports that we are articulating. And we do know that he
8 has represented he has in his possession all of his passports,
9 not just the current ones but the past ones; he has all of them
10 in his possession. At least at some point during the course of
11 the pendency of this litigation he represented so.

12 THE COURT: I am looking at request 19, the response
13 says: See the objections to request 2, which is similar to the
14 one I read with respect to the charity defendants except it
15 also says it is beyond the limited scope of jurisdictional
16 discovery authorized by the Court of Appeals and case
17 management order no. 2 and has a lot of similar verbiage.

18 MR. HAEFELE: The way I would summarize it is overly
19 broad, seeks al-Haramain and other business entities' business
20 records.

21 THE COURT: Right.

22 MR. HAEFELE: Not jurisdiction; overstates filing of
23 the action and is not relevant.

24 THE COURT: That is a summary.

25 MR. HAEFELE: So, but I do think with regard to the

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1 substance of the fact that he has a passport and he hasn't
2 produced it is similar in vein with what your Honor addressed
3 with regard to the other charity officials.

4 THE COURT: One distinction here is that Mr. Al-Buthe,
5 through counsel, asked for more time to produce documents but
6 then, as I understand it, didn't produce anything further.

7 MR. HAEFELE: He did not. He has produced zero
8 documents, although actually in his responses I think he
9 indicated that he was going to produce a document and he
10 indicated a week later or some short period later that there
11 was a tranche of documents related to Mr. Al-Buthe that they
12 anticipated producing but nothing ever surfaced with regard to
13 that.

14 If I can set a little bit of the context for
15 Mr. Al-Buthe's approach to the litigation? I remind your Honor
16 of a hearing early in this litigation back in -- way back in
17 May of 2004 before Judge Casey where Mr. Al-Buthe was arguing
18 that the plaintiffs' service on him was defective and his
19 argument rested on the fact that the plaintiffs had initially
20 served Mr. Al-Buthe at an address that he had indicated in
21 government filings that he was -- that is to the IRS -- that
22 there was a particular location where it was his office here in
23 the U.S., that's where the service was made. And the argument
24 was it wasn't really the right address, the right address was
25 nearby but the address that we had used to serve him was

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1 actually a post office box location. And you know, that, just
2 to summarize, in the dialogue that Mr. Al-Buthe had with the
3 Court, Judge Casey ended up cautioning Al-Buthe saying, Don't
4 blow smoke at me, and ultimately he concluded the exchange by
5 admonishing Mr. Al-Buthe: This kabuki dance is over.

6 I think one of the things that we are feeling is that
7 the kabuki dance has never ended and that we are near 12 years
8 later and Mr. Al-Buthe -- well, I would say he must be very
9 tired because he has still been dancing.

10 The procedural history we have here, your Honor, is on
11 April 16, 2013, the Second Circuit overturned the December 14th
12 2011 decision dismissing Mr. Al-Buthe. On October 22, 2013,
13 plaintiff serves their jurisdictional discovery requests.
14 After receiving a requested four-week and then another
15 three-week extension, as your Honor indicated a total of seven
16 weeks from the original date of the production, on November 11,
17 2013 Mr. Al-Buthe served only objections with zero documents
18 included in the production and since then he has produced zero
19 documents in response to plaintiff's discovery requests. And
20 then, on August 10, 2015, the plaintiffs moved.

21 What Mr. Al-Buthe does not respond to and so I think
22 our position is these issues are waived, aside from Al-Buthe's
23 conclusory assertion that plaintiffs requests fall outside of
24 the confines of the permitted jurisdiction of discovery which
25 our position is they obviously do not, he does not address any

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1 of the plaintiffs description of the jurisdictional nature of
2 the various categories in plaintiffs August 10, 2015 motion.

3 Mr. Al-Buthe does not counter plaintiff's arguments
4 against the various boiler plate objections including his
5 objection that requests are overly broad or that certain
6 requested documents post-dated the filing of the actions which
7 I think were also issues that were raised in the last
8 discussion regarding the other charity defendants, but he
9 doesn't oppose those in his opposition.

10 After evading his independent obligation to respond to
11 discovery since August 2013, he wrote that discovery is not
12 jurisdictional in nature and insists that he should otherwise
13 be excused from his independent obligations.

14 I think, your Honor, I believe your Honor addressed
15 what the scope of the jurisdictional discovery assessment was
16 from the Second Circuit but I can tell you what I think,
17 consistent with what you said, your Honor, the way we had
18 phrased it is whether Al-Buthe directed tortious conduct at the
19 U.S. through his role as the primary financier in support of
20 al Qaeda and Bin Laden including through the organizations and
21 financial networks under his control. It was not the
22 statements that counsel selected out of the opinion to support
23 a very, very narrow, extremely narrow if it goes to these
24 statements then you can get discovery on it; it was based on
25 that articulation I think that we just said.

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1 In fact, the Second Circuit recognized that the
2 plaintiff's jurisdictionally relevant allegations concern
3 whether Al-Buthe had expressly aimed his conduct at the United
4 States by providing material support to al Qaeda when it was
5 known that al Qaeda was engaged in a global terrorist agenda
6 directed at the United States.

7 There were a number of document requests, your Honor.
8 First, before I go into the specific request I would like to
9 address some of the broad -- what I would call -- boiler plate
10 objections which, again, our position is they waived them but I
11 do want to not just cast them aside.

12 They're overly broad objections. It just was never
13 supported, never indicated why they contend that they were
14 overly broad and they have the obligation to carry that burden,
15 your Honor.

16 I think your Honor already addressed the other
17 document objections, in other words production of documents
18 from other entities and our position is, your Honor, if the
19 documents that we have requested are in Mr. Al-Buthe's control
20 or he has the ability to produce them, he has the obligation to
21 produce them and there are documents, as we know from
22 al-Haramain's production and, just for the record, Mr. Al-Buthe
23 is an Al-Haramain official or was an Al Haramain official.

24 THE COURT: Al Haramain, Saudi Arabia?

25 MR. HAEFELE: Pardon me?

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1 THE COURT: Al Haramain, Saudi Arabia?

2 MR. HAEFELE: Well, he had a position -- he was one of
3 the officers of the Al-Haramain U.S.A. office but he was also
4 articulated in a number of documents as being a senior official
5 of Al-Haramain Saudi Arabia. I don't know that he actually
6 held a title there but he certainly held a position of
7 authority there and it is my understanding from the documents
8 to be seen that he had an office, if you will, in Saudi Arabia
9 that was an Al-Haramain physical office or physical location.

10 THE COURT: Al-Haramain, Saudi Arabia was the entity
11 that was shuttered by the government, correct?

12 MR. HAEFELE: Allegedly so.

13 THE COURT: Okay.

14 MR. HAEFELE: It has been indicated to be so.

15 And, as we know from the Al Haramain production,
16 number one, we did not get Al Haramain, Saudi Arabia documents.
17 They did not participate in any of the productions, they did
18 not participate in essentially anything in the litigation. And
19 as we know from the productions which your Honor addressed a
20 number of times with regard to Al Haramain, U.S.A., there were
21 gaps in their production, if you will. I don't need to get
22 into that but your Honor has addressed those arguments before
23 and there were gaps.

24 So, bottom line, if there are documents that
25 Mr. Al-Buthe has in his care, custody or control or that he has

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1 the practical ability to produce for us, then he should be
2 doing that.

3 With regard to their objection about documents
4 post-dating the filing, I think your Honor may have addressed
5 this previously but just to be clear, for example, documents
6 about investigations that look back, documents about
7 investigations that happened post-2001 that look back to
8 earlier times, those documents would be documents that would be
9 relevant for production even if they fall outside of the date
10 of the filing of the case.

11 What I would like to do now is turn, your Honor --

12 THE COURT: Let me just ask you about one of the
13 points that Mr. Kabat makes which is there was no meet and
14 confer here.

15 MR. HAEFELE: Your Honor, similar to what Mr. Carter
16 addressed, in our response we did lay out substantially what
17 our meet and confer was. If you look at ECF 3111 page 2 to 3?
18 If you give me a minute I can flip to that and go through that
19 with you.

20 THE COURT: No, I have read that.

21 MR. HAEFELE: Does that answer your question, your
22 Honor?

23 THE COURT: Yes. That's fine.

24 MR. HAEFELE: In short, I would say that it is not
25 true that we didn't meet and confer. In fact, we tried. They

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1 rejected. Their position consistently was we are not planning
2 on producing anything and it seemed that there was futility in
3 going further and being deferred at that point. And I am
4 making it fairly concise but there was a number of instances
5 where that dialogue back and forth happened.

6 If I can march through, it is in our moving papers but
7 we have categorized the document production requests in certain
8 categories and some of them may even combine further, for
9 example I think the first two categories are financial
10 transaction documents of Al-Buthe, his family, and accounts
11 related to Al-Haramain.

12 He had access, obviously, to his own financial
13 accounts and accounts that were in his name, accounts where he
14 had signature authority. His own accounts were part of the
15 allegations, actually regarding the moving money, Haramain
16 money to al Qaeda, Mujaheddin.

17 He also had significant control over financial
18 dealings of al-Haramain U.S.A. but spent much of his time not
19 in the U.S. so many of the documents, presumably, would have
20 been in Saudi Arabia including, for example, documents related
21 to e-mails concerning financial transactions and things along
22 those lines.

23 So, certainly whether it is documents related to
24 financial transactions of his own or Al-Haramain or folks that
25 he may have run financial transactions through, all of those

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1 are documents that he would have been obligated to produce and,
2 again we have gotten nothing.

3 His alleged support for al Qaeda using his sources
4 under his control is at the core of the allegations that he
5 conducted his conduct at the U.S. and I think that demonstrates
6 the jurisdictional hook, if you will, for both discovery
7 requests 1 and 2{ }-- both categories 1 and 2.

8 Similarly, documents related to Al-Buthe's indictment
9 here in the U.S. by the Department of Justice, investigations
10 about him, his listing and delisting and sanctions by the U.S.,
11 U.N. and by other entities, as well as his internal inquiries
12 into those allegations.

13 For example, he is a man of -- a prominent businessman
14 with contacts and resources. It is hard to believe that when
15 he had allegations being leveled against him including
16 indictments here in the U.S. and U.N. and U.S. sanctions and
17 sanctions by other worldwide entities, it is hard to believe
18 that he did nothing to investigate allegations of his
19 wrongdoing. And the fact that he has produced nothing
20 regarding those investigations, those actions, or his
21 investigations into those allegations makes it hard to believe
22 that he has nothing to produce. And clearly those allegations
23 are, again, at the heart of the allegations against him
24 concerning his direction and conduct at the U.S.

25 The next category is items personal to Mr. Al-Buthe;

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1 his bio, a lot of information you would want in a case and that
2 is where his passport falls in. Those are -- is it is hard to
3 believe that he doesn't have access to those documents, your
4 Honor. As was mentioned earlier, the fact that prominent men
5 like this do not keep records of their accomplishments is just
6 very hard to believe, that he didn't have some kind of resume,
7 some kind of biographical information, and it is hard to
8 believe since he has articulated that he has a passport that he
9 didn't have his passport.

10 I think we already covered documents in his position
11 regarding the Al-Haramain entity then documents related to his
12 interrelationships within or among terrorists, those documents
13 evidence Al-Buthe's dealings with other alleged co-conspirators
14 and may underscore the defendant's knowledge so they have a
15 jurisdictional hook in that sense.

16 So, your Honor, we have gone through and it is -- my
17 summary right here I think is in some detail laid out in the
18 brief and there has never been a response to those allegations
19 of jurisdictional connection.

20 So, to the extent that there is argument on the other
21 side that we have not demonstrated why these document
22 production requests are jurisdictional, that's something that
23 has never been responded to.

24 THE COURT: I think what we will do, rather than going
25 on to Mr. Kabat, is take our lunch break now. Why don't we say

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1 we will resume at 2:15.

2 MR. HAEFELE: Your Honor, can I --

3 THE COURT: Oh sure. I didn't mean to interrupt you.

4 THE MARSHAL: I have three things to tie up.

5 THE COURT: I thought you were done.

6 MR. HAEFELE: I am nearly done.

7 THE COURT: Okay.

8 MR. HAEFELE: It is merely several of his
9 miscellaneous arguments that I just want to make sure we tie
10 up.

11 THE COURT: Sure.

12 MR. HAEFELE: Our position is they don't matter.

13 For example, he makes an argument that Mr. Sedaghaty's
14 conviction was vacated, that was material to Mr. Al-Buthe's
15 production. We have argued multiple times that Mr. Al-Buthe's
16 U.N. delisting plays no part in what his production obligations
17 are.

18 THE COURT: Stated more generically, as the merits are
19 essentially irrelevant at this stage, even if Mr. Kabat or
20 Mr. Al-Buthe are correct, that that's not the issue before me
21 now.

22 MR. HAEFELE: I think the last two things I would say
23 is earlier we had some kind of chart that showed the cross
24 connection between the requests and the Al-Haramain requests
25 and that doesn't exist here so that is one differentiation. I

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1 don't know whether that mattered to your Honor.

2 THE COURT: It was the MWLA or IIRO. I am aware of
3 that.

4 MR. HAEFELE: Correct.

5 In this instance one of the -- I think there was a
6 reference from Mr. Carter indicating how the charity officials
7 there had interconnections with other entities in the
8 litigation and here I think it is obvious he had
9 interconnections with Al-Haramain, U.S.A., he had connections
10 with Al-Haramain, Saudi Arabia, and he also had connections
11 with the Kingdom of Saudi Arabia because he is an employee of
12 the Kingdom of Saudi Arabia. He actually, in his position
13 reports, directly to the Mayor of Riyadh who was at the time
14 was royal. I don't know who it is now.

15 THE COURT: Do you still have an Al-Haramain U.S.A.
16 production or is it simply all of that material that eventually
17 became disclosable pursuant to Court order?

18 MR. HAEFELE: There were Al-Haramain productions in
19 addition. In fact, earlier than that. That was the later of
20 the productions, I believe.

21 THE COURT: Okay.

22 MR. HAEFELE: That's all I have, your Honor.

23 THE COURT: So, we will resume at -- why don't we say
24 2:15. We will make it 2:20.

25 MR. CARTER: Your Honor, a minor question. We have

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1 some boxes of stuff here; do you mind if we leave them in the
2 courtroom?

3 THE COURT: Not at all.

4 MR. CARTER: Thank you.

5 THE COURT: As long as it is something -- we are not
6 going to lock the courtroom.

7 MR. CARTER: It is just the filings, your Honor, so.

8 (Luncheon recess)
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A F T E R N O O N S E S S I O N

2:20 p.m.

THE COURT: Go ahead. Mr. Kabat.

MR. KABAT: Good afternoon, your Honor.

I want to respond to some of the arguments that Mr. Haefele raised about discovery about Mr. Al-Buthe but, most importantly, Mr. Haefele misrepresented the Second Circuit's opinion by saying that they were entitled to discovery that he expressly aimed his conduct to this country. That is not the standard in the Second Circuit.

The Second Circuit decision is that whether there is material support for al Qaeda was expressly aimed at the United States, so jurisdictional discovery is not everything that Mr. Al-Buthe did that might be directed at this country, it has to relate to al Qaeda, material support for al Qaeda. And that gets back to the same problem we had with the other defendants in terms of plaintiffs are trying to seek merits discovery for Mr. Al-Buthe, were willing to discuss jurisdictional discovery with either Mr. Carter or Mr. Haefele. They have said that we refused to meet with them and they quoted that Exhibit B confirmed that I said that we had refused to meet. In fact, Exhibit B said no such thing, I have no idea what they're referring to but, again, plaintiff as you know, did discovery deficiency letters, or they never bothered to do a discovery deficiency letter as to Mr. Al-Buthe and they reached out to me

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1 and said let's have a meet and confer.

2 There is no e-mail on that. So, with that
3 clarification out of the way.

4 THE COURT: Well, is it correct that you haven't
5 produced, on behalf of Mr. Al-Buthe, a single document?

6 MR. KABAT: Pardon?

7 THE COURT: Is it correct that you have produced no
8 documents?

9 MR. KABAT: Apart from Al-Haramain? That's correct.
10 Because Al-Haramain documents, originally Mr. Al-Buthe thought
11 that he would be able to get documents from Al-Haramain, Saudi
12 Arabia but what happened is the Saudi government shuttered
13 Al-Haramain, Saudi Arabia, as you observed before lunch, and
14 Mr. Al-Buthe was no longer able to access the Saudi documents
15 that he thought he might be able to produce and so there was
16 nothing left for him to produce with respect to Al-Haramain.

17 THE COURT: What about with respect to -- let me go
18 back a step.

19 A lot of your letter deals with the merits basically
20 saying the result in the trial in Oregon involving Mr. Seda led
21 to a reversal and Mr. Al-Buthe has been delisted by the United
22 Nations.

23 MR. KABAT: Right.

24 THE COURT: But you haven't produced any documents
25 that relate to the delisting or your representation, which you

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1 seem to think is significant in terms of jurisdictional
2 discovery that the United States allegedly is also going to
3 delist him even though I presume those would not be Al-Haramain
4 documents but would be Mr. Al-Buthe's individual documents.

5 MR. KABAT: Well, your Honor, the plaintiff's position
6 with respect to the de listing of Mr. Al-Buthe is that it has
7 no relevance to the claims or defenses in this litigation and
8 there is settled law you can't get discovery unless something
9 is relevant.

10 Plaintiffs are trying to have it both ways, they're
11 trying to say, oh yeah, the delisting is irrelevant to claims
12 and defenses. On the other hand they're saying we want
13 discovery of something that we have admitted is irrelevant.

14 Plaintiff can't have it both ways.

15 THE COURT: You seem to think it is relevant because
16 your letter goes on for several pages about that and
17 presumably, therefore, it is relevant in some fashion.

18 MR. KABAT: Your Honor, our position with respect to
19 the relevancy of the delisting is that either plaintiff can
20 concede that both the designation and the delisting are
21 irrelevant, they're off the table, or if they concede that the
22 designations -- excuse me, if they insist that the delisting is
23 relevant --

24 THE COURT: Well, I assume since they requested it --
25 Mr. Haefele can correct me if I am wrong -- they think it is

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1 potentially relevant.

2 MR. HAEFELE: Your Honor, I don't need to correct you
3 because I think you are right, but I would add it is relevant
4 on the allegations underlying the listing as well as the
5 allegations of the considerations for the delisting. The
6 arguments in response to the listing and delisting and to the
7 defendant's defenses.

8 MR. KABAT: Well, all I can say is plaintiffs have
9 flip-flopped about the delisting. We are willing to produce
10 the information about the delisting if plaintiff is willing
11 concede that it is relevant, but if plaintiff's position is not
12 relevant then we don't see why we should have to produce it. I
13 mean --

14 MR. HAEFELE: Your Honor, may I respond? There is a
15 fundamental confusion there.

16 The fact of the delisting is not relevant. The claims
17 why they were delisted and the considerations related to the
18 arguments for delisting is what is relevant. It is the
19 arguments and the information exchanged, not the fact of the
20 delisting.

21 THE COURT: Well, if you put the word "potentially" in
22 front of "relevant" I am inclined to agree with you. Of
23 course, none of us know what that information is. There could
24 be admissions or false statements or potentially useful
25 information there but I agree that the fact of delisting,

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1 particularly since it is only by the United Nations not by the
2 U.S. at least at this point, is not relevant.

3 MR. KABAT: Your Honor, we think the delisting is
4 relevant and would be willing to produce the documents if the
5 plaintiff would agree to that too, that it is relevant.

6 THE COURT: If I order it, whether they agree to it or
7 not, you are going to produce it or other consequences will
8 flow.

9 MR. KABAT: Mr. Haeefele also discussed the criminal
10 case and why Mr. Al-Buthe had not produced anything with
11 respect to the criminal case. It is a very simple answer. He
12 has never been served with the indictment. He has nothing to
13 produce in that sense.

14 So, because he was in Saudi Arabia around the time the
15 indictment was issued, he has not left the country since then,
16 and I should note with respect to plaintiff requests for the
17 passport it is my understanding that after he was designated
18 the Saudi government took his passport, confiscating it, so he
19 could not travel outside the country.

20 So, there is nothing to produce there. Now that he
21 has been delisted by the United Nations he may be able to get
22 his passport back but we will see.

23 THE COURT: So, in the period prior to -- well, forget
24 the period prior to, the representation is that he currently
25 has no passport and doesn't have any expired passports.

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1 MR. KABAT: That is my understanding.

2 THE COURT: Okay.

3 MR. KABAT: And I would note that the document
4 requests that Mr. Haefele noticed were served after 2013 and
5 the passport and designation had been confiscated I think
6 around '04, '05, and likewise the shuttering of Al-Haramain was
7 also back in '04, '05, years before the discovery requests were
8 served on Mr. Al-Buthe.

9 Mr. Haefele also claimed that we should have produced
10 documents relating to Mr. Al-Buthe's "investigation of the
11 allegations in the complaint." Well, whatever the
12 investigation did was in connection with his attorney and the
13 attorney-client privilege and this Court has already agreed
14 with the parties that they do not have to produce documents
15 relating to the attorney-client communications nor after 9/11
16 relating to them, any allegations in the complaint including
17 the investigation.

18 Mr. Haefele also mentioned that we should produce
19 Mr. Al-Buthe's resume and documents showing his
20 accomplishments. Well, it is not clear to me how that is going
21 to tie back to whether he expressly aimed his support of
22 al Qaeda or expressly aimed "intentional tortious acts at
23 residents of the United States." That gets back to the
24 original problem we have which is plaintiff is trying to seek
25 merits discovery against a jurisdictional defendant and, again,

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1 if we had had a meet and confer we could have hashed this out
2 with the plaintiffs.

3 And I would note that plaintiffs in fact did have a
4 meet and confer with us with respect to Al-Haramain many years
5 ago, we had two attorneys from South Carolina and two attorneys
6 from New York came to our office, we had a productive session.

7 So, plaintiffs know how to do a meet and confer but
8 apparently they don't want do it here and they didn't want to
9 do it for the al Turki defendants. And, again, we are still
10 willing to meet and confer with them to identify the specific
11 document requests that go to jurisdictional discovery as
12 opposed to merits discovery.

13 If there are no further questions, thank you.

14 THE COURT: Anything else, Mr. Haefele?

15 MR. HAEFELE: Your Honor, just one quick point.

16 In Exhibit F to our -- it is at ECF no. 2990-6.

17 THE COURT: Yes, I have it in front of me.

18 MR. HAEFELE: I believe it is the declaration or as
19 part of that exhibit there is a declaration of Mr. Al-Buthe
20 dated August 4, 2010 and I believe it is from that declaration
21 that we quote and I haven't been able to locate it while we are
22 talking, it is from that declaration where we pulled the
23 statement that he has, in his possession, his passports.

24 While I am looking at it might I suggest that one of
25 the things your Honor might want to know --

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1 THE COURT: There is, on page 4 of his declaration, it
2 says: I never had seven passports -- skipping a little -- and
3 the government of the Kingdom of Saudi Arabia never required me
4 to turn in any passport or other travel document. Indeed, I
5 today have in my possession the Saudi Arabian passports that I
6 have ever had, all of which I have expired.

7 MR. HAEFELE: Thank you, your Honor. You have a very
8 good eye.

9 THE COURT: And that's dated December 2011.

10 MR. HAEFELE: And, your Honor, I would -- I guess that
11 obviates the next question which was did he get them back when
12 he was delisted but if he never had them taken, then there is
13 no reason for him to have gotten them back.

14 That's, I think the primary response that I had to
15 that. In terms of what the proper scope of jurisdictional
16 discovery is, I think I will leave it to your Honor to -- we
17 have laid out what our position is, your Honor.

18 THE COURT: How should one square the statement in the
19 2011 declaration of Mr. Al-Buthe with the representation you
20 made to the Court a little while ago?

21 MR. KABAT: I will have to check with him.

22 THE COURT: Well, as has been consistently true
23 throughout this case, drawing the line between merits discovery
24 and jurisdictional discovery can be difficult.

25 Before I rule let me also ask you, when I looked at

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1 paragraph 6 of your declaration which spoke about Mr. Seda you
2 also represent it seemed not to be tethered to what we are
3 talking about here with Mr. Al-Buthe, it looks like it was of a
4 problem of cutting and pasting. I just wanted to make sure
5 that is right and that I wasn't missing something.

6 MR. KABAT: Sorry. Again?

7 THE COURT: In your declaration that is document 53,
8 paragraph 6, the last paragraph deals with Mr. Seda and if
9 there is a point in there that relates to Mr. Al-Buthe I didn't
10 understand what it was. I wasn't sure whether the reference is
11 to -- well, it seemed to me the paragraph belonged with some
12 other document and really didn't relate to this. I just wanted
13 to make sure, your Honor.

14 MR. KABAT: Actually, your Honor, if you look at the
15 first page of that declaration I submitted the same declaration
16 in opposition to both motions to compel.

17 THE COURT: Oh. Okay. Then that explains it. Thank
18 you.

19 MR. HAEFELE: Your Honor, I guess I would make one
20 summary conclusion here.

21 THE COURT: Sure.

22 MR. HAEFELE: Defendant has an obligation to respond
23 to discovery and produce documents. Zero documents is not a
24 response. It is just an indication of actual nonparticipation.

25 THE COURT: Well, there is that and there was the

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1 request for more time to produce what eventually became no more
2 documents. As I indicated in relation to prior motions that we
3 have heard today, it seems to me that while there may not have
4 been an ideal interaction among counsel, there was an adequate
5 attempt to confer and that further conferring would not likely
6 have led to a different result since disagreement with some of
7 the requests isn't a license to ignore or not respond to all of
8 the requests. And it seems to me clear that some of the
9 documents that are sought are potentially relevant not just to
10 merits discovery but to jurisdictional discovery including, as
11 we discussed a little while ago, the documents relating to
12 listing and delisting.

13 We didn't specifically talk about it but I assume
14 Mr. Kabat's position is the same as it was earlier with respect
15 to the communications in the hands of Mr. Al-Buthe that he had
16 with the Saudi government.

17 I take it you are not claiming sovereign immunity as
18 to those; is that correct?

19 MR. KABAT: He is not asserting sovereign immunity but
20 it is not really relevant to the jurisdictional issues here. I
21 mean, he remains an employee of the government, he always has
22 been.

23 THE COURT: There is also, among the boiler plate
24 objections, the assertions that all of the records of either of
25 two Al-Haramain entities are the corporate property of those

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1 defendants and not Mr. Al-Buthe's property. I take a different
2 view; namely, if there were documents in his possession that
3 relate to those entities that are responsive, they have to be
4 produced. The objections that have been asserted are
5 essentially all boiler plate. The letter that I received
6 essentially talks about several things that I don't think are
7 relevant, one of which is, as I discussed with Mr. Haefele and
8 we all had some interchange about, the fact of delisting and
9 also the collapse of the Oregon criminal case which occurred
10 for a number of reasons, none of which relate to whether
11 Mr. Al-Buthe is or is not somebody who supports terrorism in a
12 fashion that impacted the United States.

13 Among other things, there is, as I think indicated in
14 a footnote, there was a different standard applicable to the
15 criminal case in terms of burden of proof, and obviously Grady
16 applies as a concept in the criminal case and apparently may
17 have been somewhat tortured and is not applicable in this
18 setting.

19 So, I am going to require production of the documents
20 that the plaintiffs seek as well as a certification that
21 Mr. Al-Buthe has produced all the responsive documents in his
22 possession, custody or control.

23 So, that's my ruling regarding Mr. Al-Buthe.

24 MR. KABAT: Your Honor, one question?

25 THE COURT: Yes, sure.

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1 MR. KABAT: Every document request pertains to
2 jurisdictional discovery. Are you carving anything out?

3 THE COURT: I am not carving anything out because my
4 view is the letter which didn't raise specific objections
5 essentially waived those objections and that the general
6 objections that are set forth in the formal document response
7 are not sufficient to assert an objection.

8 Let me just generally, while we are on that topic, the
9 rules applicable to this case, Federal Rules of Civil
10 Procedure, changed as you all know effective December 1st, and
11 the Advisory Committee's notes, I believe it is, suggest that
12 the they should be applied, to the extent possible or
13 practicable -- I am paraphrasing, not quoting -- in cases that
14 are ongoing.

15 So, as far as I'm concerned on a going-forward basis,
16 although I also held the view even before the rule's
17 amendments, general objections are not objections that the
18 Court will give any weight to.

19 Additionally, the change in the rule that I indicated
20 earlier says that if documents are being withheld based on an
21 objection, that must be disclosed in a Rule 34 response.

22 So, I intend to enforce both those provisions of the
23 revised rule.

24 The boiler plate objections that everybody has been
25 using since the beginning of time that objections are vague and

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1 ambiguous and unduly burdensome and the like, basically now, to
2 my mind, are surplusage, and when I see them I intend to turn
3 the page because they add nothing to the discussion and that's
4 been my view even before the rule's amendment.

5 So, that is part of the reason for the ruling that I
6 just made.

7 Let's move on to the next motion. What is that now?
8 We are up to MWL and IIRO.

9 MR. NASSAR: Good afternoon, your Honor. Waleed
10 Nassar on behalf of the IIRO and the Muslim World League.

11 Your Honor, we are here today before you seeking
12 plaintiff's compliance with your November 3rd, 2015 order. In
13 that order you obliged plaintiffs to disclose information in
14 their possession concerning the providence of a set of
15 suspected forgeries that were produced in late 2014 as well as
16 to provide us with original documents. To date, plaintiffs
17 have not provided us with any of that information.

18 I want to briefly focus your attention on four points,
19 your Honor. They are, number one, this issue has already been
20 decided and that ruling has been ignored by plaintiffs. Number
21 two, I want to briefly discuss the danger of the documents at
22 issue and why it is critical to address this matter now.
23 Number three, I would like to discuss why plaintiff's position
24 that we are not entitled to the information we seek at this
25 juncture is incorrect. And lastly, I would like to clarify

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1 what we are seeking from the plaintiffs at this juncture and by
2 contrast what we are not seeking.

3 THE COURT: They also say that this is a skirmish
4 about something that eventually may be completely irrelevant so
5 why bother dealing with it now. Maybe that's in one of your
6 other three?

7 MR. NASSAR: Yes, it will be covered in this point.
8 The relevance of the documents, if you reviewed them, they're
9 essential to plaintiff's claim.

10 First I would like to emphasize that the present
11 dispute has already been ruled upon by the Court. Since the
12 date of the Court's order some four months ago, we have reached
13 out to plaintiffs a variety of different ways. We have served
14 them with narrowly tailored interrogatories, conducted meet and
15 confers, and also exchanged numerous correspondences back and
16 forth. Despite the clear language of the order as well as our
17 repeated outreaches, we are no further along and have no
18 information on the providence of the documents. We do not know
19 the identity of the source of the document. We do not know
20 when they received them nor do we know the chain of custody or
21 any other circumstances relating to the receipt of the
22 documents.

23 Because of this impasse, we were forced to write to
24 you on January 21st and we are here before you today. I would
25 like to provide a brief overview of the nature of the documents

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1 and why it is critical to address this matter now.

2 In December of 2014, some 20 years after the first
3 documents in this set of documents was allegedly authored in
4 Peshawar, Pakistan, and some 11 years after the first lawsuit
5 in this litigation was filed a set of irregular inflammatory
6 documents were attached to pleadings against the Kingdom of
7 Saudi Arabia in this litigation. Plaintiffs provided no
8 explanation whatsoever as to where these documents came from or
9 why documents that originated from -- that were authored
10 between the dates of 1995 and 2005 would show up first in this
11 litigation in December of 2014. The documents purportedly
12 originate from closed and/or non-existent offices in Peshawar,
13 Pakistan of the Muslim World League as well as the
14 International Islamic Relief Organization. These suspected
15 forgeries contain a host of oddities that jump off it the page.
16 Among the most egregious include a doctored logo of the Muslim
17 World League that features a map, your Honor, of North America
18 and South America as opposed to the Muslim majority countries
19 that are located in Asia, Africa, with Mecca in the middle that
20 is worn on authentic Muslim World League letterhead.

21 Additionally, there is a basic big grammar mistake
22 imprinted on the letterhead of every single one of the IIRO
23 documents in this set describing a fictional office that never
24 existed.

25 Number three, there are elementary grammar mistakes

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1 littered throughout the documents that even then the documents
2 were allegedly authored by native Arabic speakers.

3 Number four, all of the documents were authored by
4 individuals who either never worked for IIRO or Muslim World
5 League or ceased working for them. In fact, one of them was
6 incarcerated in Saudi Arabia on the same day that he allegedly
7 wrote a letter in Peshawar some thousands of miles away.

8 While each of the issues listed independently weighed
9 heavily against the authenticity of the documents, the
10 cumulative effect of the issues we have uncovered is
11 overwhelming. This is only what our preliminary investigation
12 has uncovered.

13 To perform a full and comprehensive analysis we need
14 more information as to the providence of the documents, who
15 they got them from, as well as chain of custody, and we also
16 need the original documents so that we may perform the forensic
17 analysis into the ink, paper, as well as the numerous
18 extraneous documents littering all of the documents.

19 I would like to turn to why plaintiffs position that
20 now is not the time for the information that we seek is
21 incorrect.

22 On the date of the order we had already produced
23 information concerning the office closures of the IIRO and
24 Muslim World League Peshawar office as well as the employment
25 records of any of the individuals who had worked for IIRO and

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1 Muslim World League. Additionally, subsequent to your order,
2 we provided them with a specific Bates range of those documents
3 in order to facilitate their own internal investigation.

4 We have also offered to provide them with a detailed
5 list of all of the irregularities that we have located in each
6 of the documents provided on the one condition that they do not
7 provide this list to the source that they will not disclose.

8 Under this proposal they would be free to share with
9 any other analyst or any other source, just not the source,
10 because we have credible fears that more credible forgeries
11 would show up later in this litigation that may actually
12 resemble IIRO or Muslim World League documents and would be
13 hard to detect that is clear as forgery. To date, plaintiffs
14 have refused this offer.

15 THE COURT: Weren't you tipping off their source,
16 presumably for fewer than more or better once.

17 MR. NASSAR: We have concerns that the source is
18 complicit in the generation of forgeries. That is a concern
19 for us.

20 Plaintiff's chief response to us has been that our
21 requests for information on the provenance of the documents is
22 premature. They are incorrect. They're incorrect for three
23 reasons.

24 First, the Court has already ordered disclosure.
25 Second, there are grave questions with respect to these

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documents and they are central to plaintiff's case.

We need to know now, not five years from now, as this will impact the direction their case will head against both the Muslim World League and the International Islamic Relief Organization.

Third, they have already submitted these documents as evidence as part of their claims against the Kingdom of Saudi Arabia both in 2015 as well as in their recent submissions in the Second Circuit.

Your Honor, generally when authenticity is put into question, additional information must be provided by the proponent of the documents in order to allow the other party to conduct a meaning of the investigation. Plaintiff's claim a blanket work product privilege but the name of the source, the date they received the document, how they obtained them, those are all underlying factual matters and they are not work product.

Under *In Re: Initial Public Offerings Public Securities Litigation*, the underlying factual matters of attorney-client privilege are not matters in fact. This issue arose in *Strauss v. Credit Lyonnais* where the Court ruled that interrogatory requests for the identity of the persons who supplied documents to plaintiffs does not fall under the protection of the work product privilege because it does not seek processes, opinions, or mental processes of plaintiff's

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1 counsel.

2 THE COURT: I guess part of their fear is that the
3 source may be two-fold, it may be an original source that they
4 have no direct contact with and then an intermediary who they
5 don't want to give up alleging work product or other
6 privileges.

7 MR. NASSAR: It is hard for us to discern that fear
8 because they provide us with no information on the providence,
9 so if they had given us something and were withholding
10 something then that would be a credible fear but they wholesale
11 have refused to provide us any information while simultaneously
12 claiming that they do not have the original which precludes our
13 ability to go after the originals from somebody who may have
14 had the documents at a previous stage.

15 THE COURT: One of the things my November 3rd decision
16 said, and this was one-sided rather than bilateral, if the
17 Muslim World League/IIRO nevertheless wishes to limit the
18 disclosure of some of those reasons, parenthetically referring
19 to badges of fraud, in the first instance to opposing counsel
20 in order to limit the risk of further alleged spoliation, that
21 is the subject about which the two sides need to confer.

22 I take it there has been no such conference?

23 MR. NASSAR: We have conducted a meet and confer, your
24 Honor. It went nowhere. We spoke for about an hour and a
25 half. When it was made clear to us that they wouldn't provide

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1 us the basic fundamental name of who they got the documents
2 from or any information whatsoever, we left them with our offer
3 which we altered our -- previously we asked them to provide us
4 with a list of errors we noticed in the documents for attorneys
5 eyes only. Subsequent to that order we amended our offer to
6 plaintiff's counsel and said you can share it with other
7 analysts, other experts but just not the source, and then they
8 refused that offer.

9 So, even if this Court were to consider this
10 information as protected work product, which it isn't,
11 disclosure may still be ordered because there is a substantial
12 need for the information and it is in the sole possession of
13 plaintiffs. In In Re: Savit litigation the Court determined
14 that both the substantial need and undue hardship components
15 mandated disclosure because the critical information was in the
16 sole party of the adversary.

17 Plaintiffs also think that we must rely upon them for
18 their own internal investigation into the suspected forgers.
19 This is incorrect. We not only have the right to perform our
20 own investigation, we have an obligation to our clients to do
21 so. Plaintiffs propose approached so far, the best we can
22 tell, has amounted to we have asked our undisclosed source who
23 may have been complicit in concocting these documents and he
24 says they are legitimate and this is insufficient.

25 Furthermore, of the few signs of any investigation on

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1 their part have revealed an inept process. They have reported
2 to us, for instance, that they had the contents of the
3 documents analyzed by their Arabic linguist and that they
4 stated that the mistakes within them are minor. In contrast,
5 we retained a senior Arabic linguist from Columbia University
6 who has looked through each of the documents and has detailed
7 over 90 elementary Arabic grammar errors in each of the
8 documents and he has concluded that the types of basic grammar
9 mistakes in the Peshawar letters would never have been made by
10 Arabic native speaker; with that, even an elementary school
11 student would be unlikely to make many of these mistakes.

12 Your Honor, I would like to conclude with clarifying
13 what we are seeking from plaintiffs at this juncture and by
14 contrast what we are not seeking. At this juncture we are
15 simply seeking information that the Court has already ordered
16 in the November 3rd, 2015 order, namely information concerning
17 the providence of the documents, who they served them from,
18 when they got them, chain of custody, whatever information they
19 have, as well as the original documents.

20 Practically speaking, much of this information is
21 routinely shared in the course of discovery as a matter of
22 course and in fact, as plaintiffs themselves will acknowledge,
23 we have specifically provided such information to them at their
24 request without mandating the Court's involvement.

25 Again, to be clear, we are not seeking to strike the

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1 documents at present, nor are we seeking a ruling that the
2 documents are definitive forgers. We are simply seeking
3 information that is solely in the possession of plaintiffs and
4 that will facilitate our own internal investigation.

5 The nature of the suspected forgeries has caused
6 significant alarm to our clients. IIRO and the Muslim World
7 League have been defending themselves in this litigation for
8 well over a decade now only to receive what appear to be a set
9 of very sloppy forgeries dropped into a belated 2014 production
10 without any explanation whatsoever. In fact, plaintiffs didn't
11 mark the documents as responsive to any of our document
12 requests. We stumbled upon them when we were looking at
13 submissions against Osama Bin Laden and we noticed three of the
14 documents pertain to our clients.

15 As plaintiffs have not objected to the November 3rd
16 ruling they have a present obligation to comply with the order
17 and to provide us with the information that we seek.

18 Thank you.

19 THE COURT: Mr. Haefele?

20 MR. HAEFELE: Your Honor, once again, Robert Haefele
21 from Motley Rice for the plaintiffs.

22 First off, one of the things I wanted to make sure we
23 are clear on and maybe I misunderstood the scope of what we
24 were here for today, I was under the impression it was a
25 pre-motion conference that we were addressing and not

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1 necessarily the merits of the argument.

2 THE COURT: Well, welcome to the Southern District of
3 New York where pre-motion conferences tend to merge into the
4 ultimate ruling and if I didn't follow that procedure we would
5 probably still be on the second of our conferences in this case
6 so I do intend to rule on the merits. If you were misled about
7 that --

8 MR. HAEFELE: Only a little bit, your Honor.

9 First off, let me just make clear, your Honor, that we
10 do disagree with IIRO's continual -- I will underscore
11 continual -- assertions that the documents at issue are bad
12 forgeries. The write up is repeated again and again and we
13 take issue with it. Nothing that IIRO has said, even today,
14 has convinced us that the documents are other than what they
15 purport to be on their face. And I think there was some
16 language in one of your Honor's order that hinted that maybe we
17 had waived on that position. It was merely, we have engaged
18 the defendants to try and figure out if we are wrong, if they
19 can tell us something that makes us move from that position and
20 we are -- as we have said from the beginning, if it turns out
21 that these documents are fraudulent documents, we don't want to
22 use them.

23 THE COURT: Are you talking about the portion of my
24 order which said the plaintiffs do not deny that some of the
25 documents may be forged?

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1 MR. HAEFELE: Yes, your Honor. And I think your Honor
2 was being as careful as we were saying that, you know, lots of
3 things are possible and is it possible? I suppose that's why
4 we are listening to them but our position is nothing has
5 changed our view that the documents are other than what they
6 purport to be. The documents do show that the organization's
7 had direct dealings with financial and weapons support to
8 al Qaeda. The defendants are right that there are some
9 interesting facts in the documents. In one document from 1999
10 at page 4 of 7 of ECF 3086-2, the author indicates we have been
11 advised that the Mujaheddin in your camps need some weapons,
12 bombs, and bullets so we have sent you some assistance
13 including the financial assistance in the amount of 40 million
14 Pakistani rupees. We ask that you receive it at the place
15 designated by you to purchase some of the weapons needed by the
16 Mujaheddin and to address their daily problems.

17 And in another document --

18 THE COURT: And to address the what problems? I
19 didn't hear.

20 MR. HAEFELE: Daily problems. I don't know that that
21 is necessarily pertinent but it was the end of the sentence.

22 THE COURT: Oh.

23 MR. HAEFELE: Another document from 2000 on page 3 of
24 7 in ECF 3086-2: The author indicates: As agreed with brother
25 Abul Hassan -- and the rest is illegible -- in Kandahar he has

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1 send ten one hundred thousands "one million" dollars for your
2 Jihadist needs and the various programs on which you have
3 agreed with Brother Abul Hassan. We will send you this sum but
4 sending it is difficult for us so please send one of the
5 brothers to receive this sum from Pakistan from us.

6 So, they're right, that they are certainly the
7 statements in the documents do go -- they certainly support
8 plaintiff's claims, no doubt, but are they documents that are
9 essential to plaintiff's case? I think that we have many other
10 documents related to Muslim World League and IIRO that support
11 plaintiffs claims significantly even if we didn't have these
12 documents but they certainly are strongly supportive of
13 plaintiff's allegations.

14 Let me rebut some of the things my colleague on the
15 other side said. We do think that the issue is premature.
16 These defendants are insisting that plaintiffs authenticate
17 documents before we know the documents will be used at trial,
18 before they have finished their own production as part of --
19 and as part of their production even before we know whether the
20 documents need to be produced, in other words documents from
21 their production will address issues as to whether these
22 documents are authentic.

23 The issue is wasteful, it is wasteful of time. The
24 parties and the Court have spent an enormous amount of time on
25 this issue especially when you consider the relative amount of

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1 the documents compared to all the other documents in the
2 litigation and the timing of the authentication issue early --
3 I mean, I know we are many years in this litigation but with
4 regard to documents that may be used at trial this is
5 relatively very, very early.

6 The issue is distractive, it is a distraction. It is
7 distraction attention away from other important progress
8 actually necessary to advancing the case. It distracts
9 attention away from the defendant's wrongdoing in discovery as
10 is evidenced by this Court's various earlier sanctions and
11 various other rulings on motions to compel. And our presence
12 here today to argue other motions to compel for sanctions.

13 It distracts the defense's attention away from
14 finishing the long overdue obligations to search for responsive
15 documents at Muslim World League's and IIRO's multiple offices
16 worldwide, a task that purportedly has been ongoing for a
17 decade and still has not reached conclusion.

18 The issue is dangerous precedent. In agreeing to
19 consider the defendant's motion to reconsidering authentication
20 of these documents now opens the door to similar inquiries
21 regarding other documents in the scores of documents that have
22 been produced at a stage in the case where we don't know
23 whether the documents will be produced and whether the
24 discovery will be necessary. And we don't know if the
25 documents will be part of the trial.

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1 And we don't know, because we haven't seen it, whether
2 the documents the defense will produce will answer the
3 questions but, nonetheless, their approach is before they
4 flow -- before they produce their documents to us to answer
5 those questions they want to delve into our work product.

6 Their list of the problems with the documents remains
7 incomplete. We don't know all the problems that they have and
8 they have told us that they'll be, under some
9 counsel's-eyes-only suggestion they have told us they'll allow
10 us a peek at what they say is wrong but the problem with that,
11 your Honor, is that what they want to do is handicap our
12 ability to investigate before they'll give us any information.

13 Presumably the person or the people who are the best
14 people to provide us with the information that will shed light
15 on whether these documents are fraudulent or not are the people
16 who they don't want us to have answer questions.

17 THE COURT: Say that again.

18 MR. HAEFELE: They don't want us to go back to the
19 people that gave us the document and have them go up the chain
20 and investigate whether or not there are benign reasons for
21 some of the things that they're pointing out and, quite
22 frankly, given what we have heard so far, there are presumably
23 very benign, possibly benign reasons for each of the things
24 they've told us so far and the question is, are they going to
25 give us 100 lists of other complaints serially over time that

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1 we can, you know, knock down every single one or can they give
2 us from now and we can investigate them and figure out whether
3 or not there really is something behind their complaints?
4 Presumably it would be much more efficient if we were going to
5 know what all the complaints are, we can investigate all the
6 complaints, tell them what the responses are, and if they still
7 have no problem, then we have advanced it to that extent
8 without going into plaintiffs' work product.

9 One of the crux -- they've listed so far, as I
10 understand, really three categories of complaints. I know they
11 have more they haven't told us but they have listed three
12 categories of the complaint. Number one, the documents are
13 from offices that weren't operating at the time. Number two, I
14 think they have indicated they use Gregorian versus Hijri
15 dates. There is problem with the letterhead, mathematical
16 errors, things along those lines.

17 One of the cruxes of their argument really relies on
18 the fact that there is no office in Peshawar at the time these
19 documents were purportedly authored. The documents have dates
20 of, as I indicated earlier, some of them are dates in 1999,
21 dates in 2000.

22 So, much of the argument has been premised on their
23 unsupported assertion, it is just their word, that the IIRO and
24 Muslim World League offices in Peshawar were closed as of their
25 argument is 1996 and 1997. So, they argue no office was open

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1 at the time the letters were purported to have been authored.

2 Well, whether the defendant's offices in Peshawar were
3 actually closed as they contend or whether or not that closing
4 happened in 1996 or 1997 is a question that's in dispute still
5 but the evidence suggests, your Honor, that the Peshawar office
6 was still opened at least into 2011.

7 What I would like to do, your Honor, if you would, I
8 would like to pass some documents up to you to take a look at.

9 THE COURT: Have you shared those with your adversary?

10 MR. HAEFELE: Well, they are documents that they
11 shared with us, they're their own documents.

12 THE COURT: Okay.

13 MR. HAEFELE: But I would be happy to give them a copy
14 as well.

15 THE COURT: Please.

16 MR. HAEFELE: May I approach?

17 THE COURT: Please.

18 MR. HAEFELE: Your Honor, one of the documents I have
19 passed up to you is IIRO 025784 through 25803. If your Honor
20 takes a look at that, these are account statements for an IIRO
21 account that was frozen after 9/11. The account statements
22 indicate that IIRO, if you look at the address on it, the dates
23 start in, I believe, 2001.

24 THE COURT: Correct.

25 MR. HAEFELE: And if you flip to the last one, they go

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1 through September 30th of 2011. And if you look at the address
2 to the IIRO office in all of them it is the IIRO office in
3 Peshawar and their account statements for Standard Charter
4 Bank. That's at least an indication --

5 THE COURT: I see the transaction history.

6 MR. HAEFELE: If you look at the top of the document
7 on the left-hand side there is an address.

8 THE COURT: I see. Yes.

9 MR. HAEFELE: Just to be clear, the Bates stamp
10 indicates that they are produced to us by IIRO. And if that's
11 not indicative enough, if we look at the other document I
12 provided you which is IIRO 149483, it is a declaration of a
13 Shoaib Sultan, who identifies himself in the affidavit here or
14 declaration as the accountant for IIRO Peshawar and the
15 declaration is dated April 9, 2001, again that is indicating
16 that the Peshawar office of IIRO was open sometime after the
17 date that the defendants have indicated to us.

18 These indicate, your Honor, that at the very least,
19 there is a question of fact as to whether or not the office
20 they claim was closed in 1996 or 1997 was indeed closed or
21 whether or not some office was closed but there was some office
22 that was still an IIRO office in Peshawar.

23 The use of Gregorian dates versus Hijri dates? We are
24 talking about documents created in Pakistan that has a history
25 that in addition to having a history of using Arabic dates by

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1 some people, there is also a significant history of using
2 English or Gregorian calendar dates as well and whether an
3 author used one versus another, that is not a reason to
4 indicate the document isn't authentic, it is just a preference
5 of the particular author.

6 And the letterheads with the grammar and erroneous
7 information and the allegations of it being outdated letterhead
8 as well as the errors within the documents -- look -- if your
9 Honor looks, I hate to say it but if you look at one of my
10 briefs there is probably a typo in it somewhere, there is
11 probably problems or grammatical errors.

12 THE COURT: I am glad you picked on yourself rather
13 than me.

14 MR. HAEFELE: I am not really that dumb, your Honor.

15 There is also the possibility that the documents, the
16 letterhead may have been created by a local printing company in
17 Peshawar that may have been a non-Arabic native speaker.
18 Arabic is not the native language of Pakistan and the fact that
19 a non-native printer may have printed up the letterhead and
20 said something different than what a printer in Saudi Arabia
21 may have printed should be no surprise and it doesn't indicate
22 that the documents have to be non-authentic.

23 Part of the problem here, your Honor, is the
24 defendants, because they haven't completed their own
25 production, have not produced even a fraction of the documents

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1 that they should have but that that includes documents that
2 indicate misconduct attributed to the IIRO Pakistan office
3 related to fabrication of documents.

4 Discovery that relates to the fabrication of documents
5 at an office from which the documents that were here to talk
6 about originated is particularly telling.

7 Let me just digress for one moment.

8 During a hearing in November of 2011 your Honor
9 admonished these defendants, the same two defendants, that it
10 expected that among the documents they were to produce to the
11 plaintiffs are documents unlike audits done at the various
12 field offices which would have included documents underlying
13 the audits in the Pakistan office. Still, years after the
14 Court's admonition to produce the documents, we don't have
15 documents produced from those offices related to those audits.

16 On page 6 or 16 of the November -- I think it is
17 November 2011 transcript, your Honor, you made clear that the
18 discussion applied to all the branch offices of the two
19 entities, Muslim World League and International Islamic Relief
20 Organization. "Except to the extent that two sides can agree
21 that some branch office is not relevant, if each branch office
22 is not queried and documents from that branch produced, as far
23 as I'm concerned that will have been an inadequate search and
24 may lead to dispositive sanctions."

25 Then, on page 17 and to 19 your Honor said: Talk for

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1 a moment about the audits. It seems to me the defendants will
2 not have done their job as to audits unless they have searched
3 their own records to make sure that if they have retained
4 copies of audit reports and the documents that underline the
5 audit records.

6 Mr. McMahon, who represented the defendants at the
7 time, confirmed his understanding by repeating back to the
8 Court: I hear, your Honor. You want any and all records
9 produced that are still in the possession or control of the
10 charities that in any way supported the audit.

11 Then your Honor further clarified by stating: Or that
12 are the audit, yes. And then your Honor went on to explain
13 that you expected that all the branch offices to be searched
14 saying whether that is found in Saudi Arabia or in the
15 Philippines office doesn't matter. Somebody, in an organized
16 way, has to query all of these offices and be in a position to
17 say that was done to follow up and you really need to document
18 the process.

19 Your Honor was very clear that all of the offices had
20 to be searched for the underlying audit reports -- or the
21 underlying documents to the audit reports as well as the audits
22 and you also have made clear, though not in this text, you have
23 also made clear that that extends to the practical ability to
24 obtain the document from agents, for example, the auditors who
25 performed, it was an external audit, to search and go to them

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1 and ask them for documents as well.

2 And it appears that the admonition was at least
3 partially acted on by IIRO based on a letter from IIRO's
4 secretary general Dr. Adnan Basha to the directors of the
5 various IIRO offices and the letter was dated about two weeks
6 after that court hearing, December 2, 2011, and the court
7 hearing was November 16, 2011 and it asked and it went to a
8 number of offices including the Pakistani offices and the
9 document was titled Providing the IIRO Secretary General with a
10 Copy of the Working Papers Used by the External Auditor for
11 Issuing the Financial Statements of IIRO Office of Pakistan for
12 the period 1992 to 2004. That's IIRO 16657.

13 So, it is very clear, again, not only that your Honor
14 ordered them to produce all the audits, all the underlying
15 documents and that that was at least followed through, to
16 asking for those documents to be collected.

17 Now, again, discovery of the fraudulently created
18 documents from the defendant's Pakistan office is particularly
19 pertinent to the issue that we are here for today, whether or
20 not there was some involvement of documents that were
21 fraudulently created or created outside the normal scope of how
22 documents would ordinarily be created because it also goes to
23 whether they had printers on standby, whether they were
24 generally going outside, producing documents internally that
25 were not the normal documents that would get used.

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1 As indicated in plaintiff's January 28, 2016 letter
2 which is ECF 3207 and Exhibit A attached to that, the
3 defendants produced a 2001 audit indicating gross financial
4 irregularities and the diversion of millions of dollars from
5 one of their Pakistani branch offices involving office
6 personnel conducting massive fabrications of invoices,
7 receipts, and other office documents in relation to
8 construction projects, medical services and other activities.

9 And there is another document that we have recently
10 come across, it is IIRO 0149346, it is an April 14, 2001 letter
11 Nazir Khan, the manager of the IIRO office, I would pass it up
12 to your Honor but it is in Arabic so I don't think it will help
13 you.

14 My understanding of what it is, it is another document
15 produced by these defendants that indicates that in April 2001,
16 IIRO's Pakistan office was conducting an audit for some kind of
17 an investigation of alleged fabrication of financial documents
18 and signatures related to an IIRO-supported hospital in
19 Peshawar.

20 The point, your Honor, is that there is indications
21 within their own documents of massive fabrication of documents
22 going on in Peshawar and in Pakistan offices of IIRO and
23 production of those sorts of documents, production of
24 information regarding the audits and the documents underlying
25 those audits may inform information about the offices that we

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1 are here to talk about as well as the conduct of what was going
2 on and it really comes back to the very beginning that this is
3 premature. The defendants really need to produce documents to
4 us to tell us what the underlying facts are about what's going
5 on before they come to us and say that we are obligated to
6 produce our work product.

7 I won't belabor this, your Honor. In our brief we
8 cited to some case law that contradicts what the defendants
9 have said about our obligation to tell them about who our
10 investigators are and you had it right, your Honor, that we
11 have our source, our consulting investigator that we take the
12 position, identification of who our working expert or who our
13 investigator is, is privileged. Where our source got it from,
14 that's someone that we don't know, your Honor. Even if your
15 Honor ordered me to tell them who the original source is I
16 can't comply because I don't know who it is. That's something
17 that came from the investigator.

18 THE COURT: You are saying the investigator doesn't
19 know either?

20 MR. HAEFELE: I do believe that the investigator does
21 know but I will also add that the investigator has told us that
22 while he hasn't told us who it is, he has told us what the
23 position is and this is one of the reasons why he hasn't told
24 us, I think, revealing the original person or people who
25 provided the documents would put that person or those people in

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1 risk of grave harm in Pakistan and that's one of the reasons
2 why they have been very clear to us that they are very afraid
3 of us revealing who they are.

4 There is a mantra, your Honor, that you have already
5 ordered what they've asked for. My understanding, your Honor,
6 reading through what your Honor ordered was you ordered us to
7 conduct discovery and we did that. Your Honor ordered us to
8 respond to discovery, which we did. But you surely, I hope,
9 your Honor, did not intend to overrule specific objections that
10 we asserted in discovery before the discovery was even
11 responded to. So, the fact that they keep saying you have
12 already ordered this, I think, misunderstands the fact that
13 there was a process that your Honor ordered and I think our
14 position is not only have we engaged in that process but as
15 part of that process we have also served discovery on the
16 defendants and they have not produced a single document in
17 response. They have identified certain things within their
18 document -- within their responses but they have -- my
19 recollection is they haven't responded, in full, to the
20 discovery.

21 Three other really short points.

22 Number one, I think there is a reference that we
23 hadn't produced the documents before and I think they've
24 indicated the first they came to know of the documents was in
25 the plaintiff's response to the Kingdom of Saudi Arabia's

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1 papers on appeal. The fact is, though, that they were produced
2 in discovery during the document production period which
3 preceded that. They just may not have seen the documents.

4 There is also a suggestion, your Honor, of a forensic
5 analysis on the documents that we have in our possession. I am
6 afraid to say that since we just have the documents in pdf, all
7 we are going to do is find a printing from Motley Rice which is
8 no help at all.

9 It is also, your Honor, my last point and it is very
10 silly to suggest that we or any of the plaintiff's counsel
11 would accept more documents from a source that it had shown to
12 have fabricated documents. So, the implication that they can't
13 give us the information without going back to the people who
14 have the most information to answer the question because for
15 fear that we would then take more documents from them if it was
16 deemed or determined that they were fraudulent, is foolish. We
17 just wouldn't do it. It wouldn't make sense.

18 I think that's all, your Honor. Thank you.

19 THE COURT: Thank you.

20 As to this issue, the --

21 MR. NASSAR: Your Honor, can I respond to a few
22 points?

23 THE COURT: Briefly, hopefully.

24 MR. NASSAR: Your Honor, again, we are not seeking to
25 strike the documents. So much of what plaintiffs argue is,

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1 frankly, irrelevant. There is a Long discussion about our
2 discovery applications. Plaintiffs have already indicated that
3 they're intending on raising a motion to compel next month and
4 I will save a lot of our response to those issues for a later
5 date. We don't have to convince plaintiffs that they are
6 forgeries at this point, we have to raise certain issues that
7 weigh against the authenticity of the documents.

8 Plaintiffs seem to think that we must make a full
9 showing at this juncture but that is not what we are mandated
10 to do.

11 Additionally, they brought up our discovery -- they
12 brought up the Pakistan audit and the irregularities at the
13 Pakistan office. We have recently provided the plaintiffs well
14 over 90,000 pages of documents concerning the Pakistan office
15 and the irregularities that occurred there. That audit had to
16 do with the Islamabad office and had nothing to do with the
17 Peshawar office so, frankly, plaintiff's citation to that audit
18 is not relevant to the matter at hand.

19 THE COURT: How about the documents that Mr. Haefele
20 handed up today which seem to suggest that there was a Peshawar
21 office?

22 MR. NASSAR: Well, the documents -- any IIRO document
23 that has the letterhead refers to brick and mortar. I wrote
24 the operation IIRO head on business conducted there and they
25 are long standing and they still conduct certain projects in

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1 Peshawar, that has not ceased. So, we have seen other
2 indications where folks have signed as the representative of
3 IIRO in the location, would sign IIRO with the location listed.
4 It is not indicative of a brick and mortar operation there.

5 I haven't looked closely at the documents he cited but
6 that's the initial response.

7 Additionally, we are prevented from conducting our own
8 investigation into the documents so it is well taken that
9 they're not going to try to get more documents from somebody
10 who has been shown to have produced forgeries. But, if we are
11 precluded from conducting our own investigation and showing
12 that there are forgeries, it is a circular situation where we
13 are not able to show that.

14 Additionally, your Honor, this inquiry is not
15 premature. The plaintiffs are already relying on the
16 documents. You have already ordered that certain information
17 should be disclosed on both sides. Plaintiffs state that we
18 have not produced documents subsequent to your order but that's
19 because they had already been produced previous to your order.
20 We ended up specifying the Bates ranges but the fact that there
21 were no additional documents in there that we had already
22 provided that information to plaintiffs is no indication that
23 we have not complied with the order.

24 Additionally, your Honor, I have been to every
25 location personally and have supervised an Arabic team of

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1 attorneys where these documents may have been located. They
2 are not in our files. I have been to Islamabad, have been to
3 Riyadh which oversaw operations, and Mecca. In addition to
4 that, to hear plaintiffs speak about discovery noncompliance,
5 we have also led a team to the Philippines, to Indonesia,
6 Bosnia, Kosovo, Macedonia, as well as Albania. Our efforts
7 will be well documented but they have been Herculean and we
8 have produced well over 300,000 payments in the last three
9 years so I'm not sure what the nexus is to this dispute at
10 hand.

11 We need to know who the source is at bottom. It is
12 well taken that plaintiffs counsel does not know a lot of the
13 information concerning where the documents came from or how
14 they ended up in somebody's files, but by them not disclosing
15 the name of the source of the documents they're tying our hands
16 and we are unable to find that information ourselves.

17 We have also offered the plaintiffs that we would
18 review the name of the source attorney's eyes only and we would
19 not disclose that to our clients. We have previously offered
20 this to plaintiffs in a meet and confer and they have not
21 accepted that offer. So, that would mitigate a lot of the
22 fears of safety concerns I think.

23 That's all.

24 MR. HAEFELE: Your Honor, very quickly.

25 THE COURT: Yes.

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1 MR. HAEFELE: We are not stopping them from
2 investigating. They can investigate if they want and I would
3 welcome the investigation but that still doesn't mean that they
4 have the obligation or the right or authority to invade
5 plaintiff's work product information which is the crux of what
6 they're asking for us revealing our information about our
7 consulting -- it doesn't obligate us to produce information
8 about our consultants.

9 In terms of who is tying whose hands they're tying our
10 hands by not producing the information we have asked for.

11 Quite frankly, your Honor, one of the things I do want
12 to emphasize if your Honor is going to address this, it has to
13 be in the context of considering our objections to their
14 requests as well as our concerns over their noncompliance with
15 the production of documents relative to this issue. It was a
16 two-way street in terms of discovery regarding these documents
17 and we produced information and they have not.

18 Lastly, your Honor, I think that on his request for
19 attorney's eyes only access to who the source is, just the
20 source, I believe, is a little uncomfortable with us telling
21 the lawyers for the defendants who he is as well.

22 THE COURT: Say that again.

23 MR. HAEFELE: What I am saying is that it is my
24 understanding that the source -- it is not a very easy thing to
25 say, oh, Mr. So-and-so in Pakistan, we are going to tell the

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1 lawyers for the people who may hurt you or people related to
2 the people who may hurt you who you are. But, don't worry,
3 that won't get around.

4 I just don't think it is going to be well taken.

5 MR. NASSAR: Your Honor, many of --

6 THE COURT: I have heard enough.

7 I am not unsympathetic to the notion that this whole
8 exercise may be somewhat wasteful but it seems to me most of
9 the waste on a going forward basis to the extent it occurs will
10 be on the defendant's side because they'll have the laboring
11 oar in terms of proving that this document or these documents
12 are forgeries, if indeed they are.

13 I don't disagree that it's a bad precedent, perhaps,
14 in the sense that we could start going document by document and
15 having squabbles about the authenticity of documents that may
16 never factor into dispositive motion practice or a trial but we
17 did start down that road with respect to this document and my
18 rulings with respect to it are not an indication of what I
19 think should happen with respect to any future such documents
20 that may arise on either side.

21 To the extent that there were points raised about the
22 MWL and IIRO production, that will presumably be the subject of
23 yet another motion to compel. So, it seems to me that that,
24 with one exception I will get into, is unrelated.

25 My November 3rd order did not set a date for

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1 compliance and may have used some language that was more
2 generic or unspecific than it should have been. For example,
3 my statement that, similarly, the plaintiffs will be obliged to
4 disclose information in their possession concerning the
5 providence of the documents and, as counsel pointed out, no
6 objections to this order back in November, were filed.

7 I am not insensitive to the concerns about the safety
8 of sources or the dismay that an intermediary source who is
9 functioning in some sort of investigative function may have but
10 I do think reasonable accommodations can be made.

11 I am going to require that on a date certain -- and
12 the two sides can confer on what that date should be and if
13 they are unable to agree I will set a date -- the defendants
14 MWL and IIRO must disclose the specific badges of fraud that
15 they say establish the falsity or the fraudulent nature of the
16 document and that if there are documents that support that
17 claim, even if they're just specimen documents, that those
18 documents be produced as well. The defendants can set the
19 restriction that they proposed which is that everybody other
20 than the source can be given that list of reasons why the
21 defendants believe the document is forged.

22 As to the source, there really are two sources, the
23 investigator and the ultimate source of the document which
24 Mr. Haefele may not know but certainly is something that
25 potentially the plaintiffs can find out.

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1 As to the investigative source of the document, if I
2 can call it that, I am going to direct that that be produced
3 for attorney's eyes only.

4 As to the ultimate source, I am going to make the same
5 direction but I will permit the plaintiffs to make a
6 particularized showing to me, why don't I say within two weeks,
7 as to what danger that would present -- and I do mean
8 particularized. And I would expect that all or virtually all
9 of that submission would be shared with counsel for the
10 defendants so that hopefully there won't be a document with
11 redaction that defense counsel receives.

12 If it turns out that the accusation regarding the
13 providence of the document being fraudulent -- let me rephrase
14 that because it is coming out wrong.

15 If it turns out that the accusation that the document
16 is false or forged eventually proves to be incorrect, I may
17 well or the Court may well award the costs associated with all
18 of this to the plaintiffs against the defendants.

19 Originally I was going to reserve decision as to
20 whether the defendants could have their own expert test this
21 document but since it appears not to be an original there is
22 nothing that can be done by way of testing at this point. I
23 want the two sides to discuss where the original is and whether
24 it can be brought to the United States or perhaps is in the
25 United States in the hands of the investigator. If so, I would

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1 permit the defendants to inspect the original but would not
2 require that it be surrendered for purposes of expert testing
3 without a further order of the Court.

4 So, those are my rulings with respect to this issue.
5 Any questions?

6 MR. HAEFELE: Your Honor, I do have some questions.

7 I think your Honor touched on it, but with regard to
8 our particularized showing, based on what your Honor said I'm
9 assuming that though it is not favored, some of the submission
10 may be in camera?

11 THE COURT: That's exactly right. Yes.

12 MR. HAEFELE: Okay.

13 THE COURT: I'm not in favor of that or would hope
14 that that wouldn't come to pass but I am not ruling it out.

15 MR. HAEFELE: And, your Honor, to the extent that the
16 defendants, with regard to their, the document discovery
17 responses that they've proposed to us related to these
18 documents, to the extent that they purely object based on
19 filing grounds, a lot of it was that they thought that we
20 should go first and not them.

21 THE COURT: When you say discovery responses?

22 MR. HAEFELE: Based on your Honor's ruling the
23 defendants served discovery on us and we served document
24 requests and interrogatories on them. Some of the responses
25 the defendants responded to us was that much of it was you go

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1 first and in light of your Honor's ruling that it is not
2 necessarily that plaintiffs go first, to the extent that that's
3 what their objection was, may we have that discovery?

4 THE COURT: Well, my ruling is I hadn't focused on
5 discovery that the two sides may have served on each other but,
6 in essence, my ruling is you all go together when you go so on
7 certain dates both sides are to respond and I do mean respond,
8 not file a series of objections.

9 Anything else?

10 MR. NASSAR: Your Honor, two things.

11 THE COURT: Let me finish with Mr. Haefele.

12 MR. HAEFELE: To the extent there are discovery
13 requests on both sides, the date that we select would be both
14 sides would be responding?

15 THE COURT: Yes.

16 MR. HAEFELE: Okay.

17 THE COURT: Yes, sir.

18 MR. NASSAR: Your Honor, we have two outstanding
19 questions aside from the name of the source of the documents,
20 namely the date on which they received the documents as well as
21 other circumstances surrounding how they obtained the
22 documents. We didn't -- if you could rule on those as well?

23 THE COURT: I think that's what Mr. Haefele in part
24 was asking me about. I think I did just rule.

25 MR. HAEFELE: I was asking about their responses to

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1 us.

2 THE COURT: Okay, but it is comprised within that
3 ruling, it seems to me.

4 MR. NASSAR: Thank you, your Honor.

5 THE COURT: And I guess that brings us to Wael
6 Jelaidain.

7 Let's take five minutes.

8 (Recess)

9 THE COURT: On to Wael Jelaidain.

10 MR. CARTER: Your Honor, thank you. I will be as
11 brief as possible. I understand we have all been here for a
12 long time and we have already covered quite a bit of territory
13 along the way with Mr. Jelaidain.

14 The motions before your Honor include both request for
15 sanctions and to compel further production of documents from
16 defendant Jelaidain. They include banking and other documents
17 Jelaidain secured for the benefit of co-defendant Yassin
18 al-Kadi, documents relating to the Swiss government's
19 investigation of Jelaidain including materials relating to the
20 interview that was conducted of him in Riyadh, documents
21 relating to the Maryam Company at Faisal Finance, a joint bank
22 account he held with fellow executive order 11234 designate
23 Sharif Ayadi, documents relating to his ties to government
24 offices of the Kingdom of Saudi Arabia and its charities, and
25 finally documents relating to his corporate agent and Abrar

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1 Caravan, Euro Investment, KA Stan and Maryam Travel.

2 As your Honor knows, this Court issued sanctions
3 against Defendant Jelaidain in October of 2013. After a
4 somewhat tortured procedural history the Court imposed those
5 sanctions based on the record that existed at that time that
6 demonstrated that Defendant Jelaidain had not taken to heart
7 this Court's directive that he engage in a full court's press
8 and make diligent efforts to secure such documents within his
9 custody and control.

10 The further discovery we have received at this point
11 paints a more problematic picture of the state of affairs, your
12 Honor. In particular, documents produced by defendant al Kadi
13 reveal a 2003 meeting between Mr. Kadi's attorneys and
14 Mr. Jelaidain's attorney which Mr. Jelaidain promised to
15 provide assistance to Mr. Kadi in relation to the
16 investigations of him and, in particular, to authorize access
17 to corporate documents for Maryam as well as banking documents
18 for Jelaidain's personal accounts and for Maryam accounts at
19 Faisal Finance.

20 Thereafter, on July 18, 2003, Defendant Jelaidain
21 received a letter from Faisal Finance indicating it had started
22 retrieving the records. So, what we now know, your Honor, is
23 at the time Defendant Jelaidain was indicating to this Court
24 that it was impossible for him to secure his records and his
25 banking records, he had in fact successfully done so for the

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1 benefit of defendant al Kadi.

2 And so, that paints a much different picture of the
3 state of affairs when this Court issued its original sanctions
4 order and we think the misrepresentation warrants the
5 imposition of additional sanctions to ensure that we don't
6 continue to encounter this kind of conduct. So, that's the
7 first component.

8 Your Honor, obviously we want the documents as well
9 that he secured for Mr. al Kadi as described in those materials
10 as well as documents relating to the Swiss government's
11 interrogation of him on May 3rd, 2004. At the time that
12 occurred Mr. Jelaidain was a defendant in this litigation
13 represented by counsel and he obviously had an obligation to
14 retain records relating to that interrogation and his
15 associated engagements with the Swiss authorities. We have
16 never received those materials and so we think Mr. Jelaidain
17 should be directed to provide all of those as well.

18 We have also already discovered some additional bank
19 accounts that we did not know of during the earlier proceedings
20 and so we don't know whether any effort has been undertaken
21 with respect to these additional bank accounts, they include an
22 Istanbul-based bank account for Jelaidain individually and also
23 an account for Maryam company. In addition, some U.S.
24 diplomatic cables disclose an account Jelaidain held jointly
25 with Shafiq Ayadi in Croatia at Privredna Banka, Zagreb.

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1 So, your Honor, we ask for a directive that
2 Mr. Jelaidain undertake efforts to secure records from those
3 institutions as well.

4 We also have a bit of a fuller picture now of the
5 range of business activities that Mr. Jelaidain has and has
6 engaged in. He is a very active businessman in addition to the
7 charitable associated activities that were the subject of much
8 of our earlier discussion. Those business activities also
9 generally involve interactions with other designated parties
10 and al Qaeda affiliated parties. Mr. Maloney is going to step
11 up in a minute to describe one of those and describe whether it
12 is relevant and why we are asking for discovery on these issues
13 but generally, as I said, all of these companies we have
14 identified in our papers, Abrar Caravan, Euro Investment, KA
15 Stan and Maryam Travel are entities that Jelaidain had
16 leadership position in. In many cases, documents were being
17 sent to a common address he used for multiple of his businesses
18 suggesting that he clearly had possession of these materials.
19 And, lastly, any documents relating to his long history of work
20 on behalf of government agencies of the Kingdom of Saudi Arabia
21 and in particular its charities which he directed.

22 Basically, what we have heard in response to this
23 issue, your Honor, is the same thing we have heard before. I
24 am under house arrest which does not really hold water. We
25 have comments in the news in the kingdom from his own

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1 Saudi-based lawyer years ago indicating that he was operating
2 without restriction in conducting business and we have news
3 accounts much later in 2008 indicating that he was a featured
4 speaker at a charitable conference hosted by defendant WAMY.

5 So, every indication is that he is free to operate in
6 the kingdom and not subject to nip house arrest.

7 We have also heard this claim that all of his records
8 were sequestered and seized by the Swiss authorities. The
9 document that's been cited relates to a single Citibank Geneva
10 account. It doesn't require the sequestration of all of his
11 bank accounts. There are literally dozens, some of them are
12 outside of the province of Switzerland anyway.

13 So, the explanations we have heard at this point
14 really don't stand. We are sort of approaching the end of the
15 road.

16 With that, your Honor, I would like to briefly turn it
17 over to Mr. Maloney.

18 THE COURT: Before you do that, your letter clearly
19 says and you repeat it today that you are not seeking a default
20 judgment but some other form of sanction or course of sanction.
21 What did you have in mind?

22 MR. CARTER: Well, your Honor, I think what we had in
23 mind is if the court were agreeable to imposing the sanction we
24 would make application as we did in the past. I think, in all
25 candor, it is unlikely to be a direct relationship to

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1 attorney's time spent on further efforts to bring Defendant
2 Jelaidain into compliance but rather to have an element
3 intended to deter this kind of conduct going forward.

4 There is also the issue, obviously, your Honor, that
5 there is already the existing sanction order against Defendant
6 Jelaidain which hasn't been made as of yet.

7 THE COURT: Thank you.

8 MR. CARTER: Thank you, Mr. Maloney has a few words.

9 MR. MALONEY: Good afternoon, your Honor. I am going
10 to be very, very brief. It has been a long day.

11 One of the things I want to talk about is
12 Mr. McMahon's response to our motion and in it, if you read it,
13 he talks a lot about the Swiss authorities and the seizure of
14 records. What he doesn't mention at all anywhere in there that
15 I saw was this company called Maryam that Mr. Carter referred
16 to that is in our papers both in our motion and in our reply
17 papers and that's because Maryam is in Turkey. The Swiss have
18 nothing to do with it and no control over it. So, in his
19 opposition he talks about the Swiss investigation and says
20 nothing about what is going on with Maryam and Turkey. That
21 company was shut down in 2002 or 2003 but I want to give you a
22 snippet of why that company is important to us and why we ask
23 for the information and I will try to do it in two minutes.

24 THE COURT: Sure.

25 MR. MALONEY: That company, it is called Maryam

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1 Travel, sometimes Maryam Import/Export located in Turkey, as I
2 indicated. It was founded by Mr. Salim, that's Mohammed Salim,
3 who was a senior al Qaeda member and very close to Bin Laden.
4 He was a suspect in the '98 embassy bombings, later arrested in
5 Germany and extradited to the United States where he stabbed a
6 prison guard in the eye and received a life sentence for that.
7 So, that's the founder of the company.

8 In '96 and '97 he sold the company to Mr. Jelaidain
9 and Mr. Jelaidain ran the company. Salim stayed active in the
10 company for some period of time with another gentleman by the
11 name of Al Jazeed and Mr. Kadi then started funneling money to
12 the company Maryam in Turkey, allegedly so Maryam could build
13 some housing for the University in Yemen. That university is a
14 university, it is a known educator for Jihad, the students
15 there later become Jihaddist. Bin Laden referred to it in
16 support of the school.

17 There was over, I think, a million and change that we
18 found documentation on money transfer from Kadi to Maryam, i.e.
19 Jelaidain, that disappeared. Most of that money disappeared.
20 We have some of that information, some of those records. We
21 have asked for all of the records related to Maryam, the
22 business corporate records, financial records, anything to do
23 with Maryam as well as, of course, Mr. Jelaidain and the others
24 and the other intersects because there is a lot of especially
25 designated global terrorists associated with that company

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1 meaning Mr. Kadi and Mr. Jelaidain. We have received nothing.

2 Mr. McMahon doesn't even mention that company in his
3 opposition and doesn't say why he has not responded to those
4 specific and pointed document demands.

5 And just to quote Judge Casey and Mr. Haefele, it is
6 another kabuki dance that we have gotten year in and year out
7 from Mr. Jelaidain and Mr. McMahon.

8 THE COURT: Thank you.

9 Mr. McMahon?

10 MR. MCMAHON: Yes. Good afternoon, your Honor. I
11 know it has been a long day for you and for all of us. I will
12 try to be brief.

13 I would like to address maybe initially the Swiss
14 money situation. We believe there was a valid argument about
15 sequestration because we had never been alerted to the fact
16 that we had appeal rights and we only recently were privy to
17 that information. But, in terms of this Swiss bank account --

18 THE COURT: Wait. You have lost me. An appeal right
19 in Switzerland?

20 MR. MCMAHON: You are supposed to be notified by the
21 bank that has received the sequestration order from the
22 government that, indeed, you, Mr. Jelaidain, have a right to
23 appeal this order. We never got any notification from the
24 Swiss bank that we had a right to appeal that sequestration
25 order and that's in our papers, your Honor. Had we been told

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1 about that he could have hired Swiss counsel and had done an
2 appropriate appeal but I do think the sequestration issue is
3 different than the one that the expert focused on, Professor
4 Jaruli, he did not get into sequestration. I think
5 sequestration poses a different issue in terms of someone's
6 ability to produce documents.

7 But, your Honor, I would like to come up with maybe
8 some sort of solution here instead of wasting your time and the
9 case has been going on for years, of course.

10 Could we perhaps draft, myself and plaintiff's
11 counsel, an order that you would be willing to sign which goes
12 to Citibank, the Swiss authorities, Bank Faisal and any other
13 banks they want in Switzerland and we authorize you produce
14 everything you have with respect to Wael Jelaidain and this new
15 entity Maryam which I guess was shut down in 2002?

16 We are not adverse, your Honor, to full disclosure of
17 anything that is in the Swiss bank accounts or Swiss financial
18 records, Swiss authorities. We would like to get this all out.
19 We have been unable to do so.

20 When they talk about house arrest, your Honor, you can
21 be under house arrest and still receive permission to give a
22 speech, for example, at a function, or to attend your
23 daughter's wedding. I don't know if he is wearing an ankle
24 bracelet but your Honor knows lots of times situations come up
25 with a potential criminal matter has to have access to some

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1 sort of medical treatment or whatever. There are a number of
2 reasons why house arrest doesn't mean that you are totally
3 confined to the house.

4 Now, with respect to some of the new allegations that
5 I hear, let's talk about Turkey.

6 Again, your Honor, I checked before today and I
7 received no update in terms of we do have some information now
8 and so I have nothing to provide you, your Honor, in that
9 regard. I know you are not a fisher of that. My question is
10 can we craft a civil order with respect to any and all banks,
11 companies like Maryam, in Turkey, and if you are willing to
12 sign it then we send it and maybe then they will listen to a
13 court order in terms of producing things?

14 And we have no problem, your Honor, about full
15 disclosure. Anything the plaintiffs want to request consistent
16 with their Rule 34 request, obviously, we would have no problem
17 with drafting, co-drafting an order to that effect. We want to
18 get this behind us. No one seems to believe, your Honor, that
19 even though counsel overseas has tried to secure those records
20 he couldn't. And now we know why. There was a sequestration
21 order in effect and basically everything was waiting for Wael
22 Jelaidain to be basically extradited to America. And
23 consistent with my prior arguments, your Honor --

24 THE COURT: Hang on.

25 One thing that counsel said was that the sequestration

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1 order only dealt with one Citibank account in Switzerland.

2 MR. McMAHON: I don't think I read it that way, your
3 Honor, but I will go back and look at it, but my point is even
4 if there is no sequestration order, the attempts on Counsel
5 Bali, and he has sent letters to your Honor that we have
6 attached to our letter and he has tried to get, OFAC will slam
7 you for aiding and abetting an international terrorist and at
8 the time this all played out my guy was designated both by the
9 U.N. and by America, especially designated global terrorist.
10 Banks don't want to do business with someone like that because
11 they'll get into trouble but my point is, your Honor, I am
12 trying to come up with some solution so that you can be fairly
13 convinced that we have nothing to hide, we have an inability to
14 get records that the plaintiffs say they want, okay, let's
15 draft up an order that you are willing to sign, send the order
16 to the appropriate Swiss authorities whether it is Citibank,
17 Swiss authorities or Faisal, I don't care, and let's see if we
18 can bring this to a close, your Honor, because we are wasting
19 too much time on it.

20 In terms of further sanctions, I don't think it is
21 appropriate at this time for the Court to consider that unless
22 you are content that despite our diligent efforts we are sort
23 of hiding documents.

24 But, to the extent I authorize -- and I went through
25 this with counsel and the client -- let's send an order over

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1 that you are signing which says produce all of this stuff and
2 give plaintiffs every document they want.

3 THE COURT: Thank you.

4 Anything further, Mr. Carter?

5 MR. CARTER: Your Honor, a couple of quick points.

6 The sequestration order that's attached to Jelaidain's
7 opposition papers refers to just a single account at Citibank,
8 that's pretty clear.

9 Second of all, your Honor, with regard to this idea
10 about drafting an order to send out to international
11 authorities. We were down this road many, many years ago and I
12 think we said if Mr. McMahon and Mr. Jelaidain want to draft
13 letters interrogatory for your Honor's consideration and try
14 and fulfill their obligations that way, they can. It is not
15 our responsibility to do that. And that ship was in port and
16 sailed away quite a long time ago.

17 Lastly, with regard to the sanctions request, again,
18 it is based on the evidence that now exists that Mr. Jelaidain
19 affirmatively secured and was able to obtain copies of his
20 records and that's a different record than was before the Court
21 previously.

22 Thank you, your Honor.

23 MR. McMAHON: Your Honor, on that last point again
24 Abdullah Kadi and his attorney got those records, we never got
25 those records until they were produced as of, I think last year

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1 by Abdullah Kadi's counsel. Our guy never had those records,
2 it was Kadi's counsel -- sorry, Abdullah Kadi's counsel and his
3 aggressive law firm in London that was able to achieve, working
4 with a Swiss attorney, to achieve the production of these
5 documents. Keep in mind, your Honor, that this is a man who is
6 no longer designated as a specially global designated terrorist
7 like Wael Jelaidain. Again, a bank doesn't have a problem
8 dealing with somebody who has been delisted because that is
9 proof positive he is not a global terrorist. We have the
10 lingering problem that we have been both designated by the U.N.
11 and America as a global terrorist and that's always been the
12 brunt of our problems, your Honor.

13 And to the extent there are new issues that they've
14 brought up, I heard some new allegations about links to this,
15 links to that. Again, I would ask your Honor to consider I
16 haven't seen any factual linkage in terms of how Wael Jelaidain
17 assisted in destroying the U.S. S Cole or blowing up the first
18 World Trade Center or the embassy bombings. I haven't seen
19 anything, your Honor. It is just premised on newspaper
20 clippings and reliance on documents like the golden chain which
21 has been, you know, disregarded by these four or five federal
22 judges.

23 That's it for me, your Honor. I know you have had a
24 long day. Thanks for hearing me out.

25 MR. CARTER: Your Honor, I am not going to address

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1 much of that. I would just say that Defendant Kadi's very
2 aggressive attorneys obtained the documents because Jelaidain
3 assisted them and authorized them to get them. So, attorneys
4 working with Defendant Jelaidain's assistance could get the
5 documents.

6 Thank you, your Honor.

7 THE COURT: Well, I read the papers related to
8 Mr. Jelaidain and much of the written paperwork, perhaps more
9 so than the argument today, constitutes an attempt to
10 relitigate my prior award of sanctions and is a road I am not
11 going to go down.

12 The letters that were appended are in French, they
13 aren't translated, and there is the conclusory, unsworn letter
14 from Mr. Alim, Jelaidain's Saudi counsel, indicating what the
15 letters purport to say. But, again, that's much of the same in
16 terms of what was before the Court previously at the time that
17 the motion was before me.

18 It seems to me the salient fact that Mr. Carter
19 detailed whether Mr. Kadi was de-designated or never
20 designated, with the assistance of Mr. Jelaidain he was able to
21 secure documents that relate to a personal Faisal finance
22 account of Wael Jelaidain in 2003 and there is no apparent
23 reason why Mr. Jelaidain, with Mr. Baseem's assistance could
24 not do the same with respect to the discovery requests here.
25 And, at times I have issued orders relating to financial

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1 documents overseas including in the Middle East -- not in this
2 case but in cases involving at least Egypt and talk about
3 kabuki dances? That's a kabuki dance.

4 So, I will sign whatever orders, Mr. McMahon, you wish
5 me to sign, although the Hague Convention would be a much
6 better way to go assuming that any of the countries we are
7 talking about are signatories and haven't opted out of any of
8 the provisions but again, the key point is as I found
9 originally, there was inadequate effort to secure documents and
10 proof with respect to Mr. Kadi seems to simply underscore that.

11 I will order again, although it is really not
12 different from my prior orders, that Mr. Jelaidain produce the
13 documents with the sole exception of the so-called golden chain
14 documents. And I will permit the plaintiffs to make a motion
15 for sanctions that they wish to make.

16 In a number of instances today I have suggested
17 actions that need to be taken but haven't set specific
18 schedules for most of those and I trust that two sides will
19 confer quickly and submit a proposed scheduling order to me.

20 Is there anything else that we ought to take up today?

21 Yes?

22 MR. KREINDLER: Your Honor, I mentioned if we could
23 have two minutes on the Iran situation?

24 THE COURT: Yes. Sure.

25 MR. KREINDLER: Thanks.

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1 I can talk to your Honor now. It doesn't concern
2 any --

3 MR. McMAHON: Your Honor I can't hear what that party
4 said.

5 MR. KREINDLER: Jim Kreindler.

6 That does not concern any of the defendants here so I
7 don't want to put them out.

8 THE COURT: Well, we can do it in this forum or we can
9 do it in the robing room. It really deals with the default.

10 MR. KREINDLER: If it is all right, your Honor, why
11 don't we go to the robing room when we are done?

12 THE COURT: Does anyone object to me dealing with
13 Mr. Kreindler ex parte about that? Everyone looks eager to
14 leave.

15 Thank you, all. I take it counsel are ordering the
16 transcript?

17 MR. CARTER: Yes.

18 THE COURT: And I am sure you will need to work with
19 the reporter on some of those names.

20 oOo